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REPORTS OF CASES

IN

CRIMINAL LAW,

ARGUED AND DETERMINED

IN ALL THE COURTS IN ENGLAND AND IRELAND.

EDITED BY

EDWARD W. COX, ESQ., OF THE MIDDLE TEMPLE,

~~Barrister-at-Law.~~

VOL. VI.

1852 to 1855.

LONDON:

JOHN CROCKFORD, LAW TIMES OFFICE, 29, ESSEX STREET,
STRAND.

1855.

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REPORTERS.

CRIMINAL APPEAL CASES, before all the Judges, by A. BITTLESTON, Esq.;
CENTRAL CRIMINAL COURT, by B. C. ROBINSON, Esq.;
NORTHERN CIRCUIT, by J. STAMFORD RAFFLES, Esq.;
OXFORD CIRCUIT, by J. E. DAVIS, Esq.;
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NORTH WALES CIRCUIT, by ÆNEAS J. M'INTYRE, Esq.;
IRELAND, by P. J. M'KENNA, Esq.;

Barristers-at-Law. .

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REPORTS

OF

Criminal Law Cases.

CENTRAL CRIMINAL COURT.

May 29, 1852.

(Before LORD CAMPBELL, C.J., JERVIS, C.J., POLLOCK, C.B.,
COLERIDGE, J., CRESSWELL, J., ERLE, J., TALFOURD, J.,
and CROMPTON, J.)

REG. v. ION. (a)

Forgery—Uttering—Receipt—Evidence.

A. applied to B. to lend him money, and gave him the name of the defendant as a surety. B. went to the defendant, and, to satisfy himself of his respectability, asked to see his receipts for rent and taxes. The defendant placed in the hands of B., for his inspection, three documents purporting to be receipts for poor rates, with the intent to induce B. to advance money to A. One of these receipts was forged. B. inspected the documents and then returned them to the defendant:

Held, that the defendant might be convicted within the 11 Geo. 4 & 1 Will. 4, c. 66, s. 10, of uttering a forged receipt, and that, for the purpose of rendering him liable, it was not necessary that the receipt should be used to get credit upon it by its operating as a receipt, but that it was sufficient if he used it fraudulently to obtain money by means of it:

Held, also, that it was immaterial whether the money to be obtained by means of it was for himself or for any other person.

THE following case was stated by the Recorder of London for the consideration of the judges:

At a Sessions of Oyer and Terminer and Gaol Delivery, holden for the jurisdiction of the Central Criminal Court in December, 1851, William Ion was tried before me upon an indictment for feloniously uttering, disposing of, and putting off a forged receipt for 2*l.* 4*s.*, knowing, &c., with intent to defraud. It appeared in evidence

(a) Reported by B. C. ROBINSON, Esq., Barrister-at-Law

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that the prosecutor, James Dwyer, was a money lender, that one James Gillard had applied to him for a loan of money, and had proposed the prisoner as a surety for the amount; that, thereupon, the prosecutor proceeded to the house of the prisoner for the purpose of satisfying himself as to the prisoner's responsibility, and, with this object, required the production of the prisoner's receipts in respect of that house; that the prisoner, with a view to causing the money to be advanced to Gillard, who was found to be a man of no responsibility, upon their joint security produced to Dwyer, and placed in his hands (but for the purpose of inspection only), three documents purporting to be receipts for poor rates in respect of the said house, one of which was the forged receipt in question. The prosecutor inspected these documents, the prisoner remaining present during such inspection. He then received back the documents from the prosecutor, and placed them upon a bill file. The foregoing facts comprised the uttering, disposing of, and putting off mentioned in the indictment.

It was objected upon the trial that these facts did not amount to an uttering, disposing of, or putting off sufficient to support the indictment. I, however, ruled the contrary; and, as the other necessary facts were proved to the satisfaction of the jury, they found the prisoner "guilty." The jury also found, expressly in answer to a question put to them by me, that the prisoner placed the receipts in the hands of the prosecutor for the purpose of fraudulently inducing him to advance the money to Gillard. Considering it doubtful whether I was correct in my ruling, I have postponed judgment upon the indictment, and committed the prisoner to the gaol of Newgate in order that your lordships' opinion and decision might be taken upon a case to be stated; and the foregoing is the case upon which your lordships' decision is requested.

This case had been previously argued, on the 24th January, before Jervis, C. J., Alderson, B., Coleridge, J., Wightman, J., and Cresswell, J., but they having expressed a wish that it should be re-discussed,—

Metcalfe, for the prisoner, now contended that the conviction could not be sustained. There was no uttering, disposing of, and putting off within the meaning of 11 Geo. 4 & 1 Will. 4, c. 66, s. 10. The merely putting a document in the hands of a person for the purpose of inspection, was clearly neither a disposing of, nor a putting off: (*R. v. Woolridge*, 1 Leach, 344; *R. v. Varley*, 2 W. Bl. 682.) With respect to an uttering there must be an intent to put the instrument or coin into circulation: (*R. v. Harris*, 7 C. & P. 428.) There it was held that the engraving of a forged note, given to a person as a specimen of skill, could not be thereby taken to be uttered. *R. v. Wavell* (1 M. C. C. 224), established the same principle.

ALDERSON, B.—I do not see how you can utter a receipt except by showing it and declaring that it is one. It is not like coin or a bank note, which must be transferred to become available. A receipt is never intended to be parted with or transferred.

Metcalfe.—In Webster's Dictionary the word "utter" is defined to be "to put or send into circulation;" in Richardson's Dictionary it is "to put forth." To constitute a sufficient uttering, there must be an intention to obtain money or credit upon the instrument itself. It cannot be pretended here that the money was advanced upon this document operating as a receipt. It was shown for a collateral purpose, viz., to induce a belief that the defendant was a respectable and responsible person: it was strictly to raise the character of the defendant in the mind of the prosecutor, and not for the purpose of directly obtaining money. In *Reg. v. Shukard* (R. & R. 200,) the prisoner was indicted under 13 Geo. 3, c. 79, for uttering a forged promissory note; and the evidence was that, in order to persuade an innkeeper that he was a man of substance, he showed him a pocket-book containing notes which were forged, and delivered it to him to take care of, and it was held that this was not sufficient as an uttering with intent to defraud, since there was no intention to get money or credit upon the notes. In *Reg. v. Radford* (1 Den. C. C. 59; S. C. 1 C. & K. 707), an alleged receipt was produced to a person who came to receive the amount which was the subject-matter of it, and this was held evidence of an uttering with intent; but there, by the production of the instrument, the person producing it intended to get credit upon the instrument itself, by its operating as a receipt. That case differs in all essential particulars from this, in which there is no necessary connection between a receipt for rates and the advance of money to a third person.

Parry, for the prosecution.—To represent a forged instrument to be genuine, by producing it with intent to defraud, is an uttering within the meaning of the statute. The intent to defraud is a presumption of law wherever the facts are such that the natural consequence would be that a person would be defrauded. But here the intent to defraud is clear, and is found by the jury. Whether the money is to be obtained for the defendant himself or for any other person, is quite immaterial: it is sufficient that the prisoner intended that the prosecutor should part with money in consequence of the act which he committed. *Reg. v. Shukard* is quite distinguishable from this case. There the forged notes were produced out of mere bravado. It could scarcely be said that they were uttered, and there seems to have been no specific intent to obtain either money or credit. (He quoted *R. v. Birckett*, R. & R. 86; *R. v. Cook*, 8 C. & P. 582; and *R. v. Welsh*, 2 Den. C. C. 78; S. C., 20 L. J. 101, M. C.)

Metcalfe replied.

Cur. adv. vult.

LORD CAMPBELL, C.J., in giving judgment.—We are of opinion that this conviction ought to be affirmed. Upon consideration, there appears to us to have been an uttering of a forged receipt within the meaning of the 11 Geo. 4 & 1 Will. 4, c. 66, s. 10. If it had been used in the manner stated, for the direct purpose of gaining credit for the payment which it purports to vouch, there

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can be no doubt, since the case of *Reg. v. Radford*, that there would have been a sufficient uttering. But the prisoner's counsel contended that there cannot be an uttering of a forged receipt unless it be used directly to get credit upon it by its operating as a receipt, so that the merely using this receipt for the purpose proved—to induce a belief that he had paid the money, and, therefore, was a man of substance,—did not amount to an uttering within this act of Parliament. *Reg. v. Shukard*, which was mainly relied on for that distinction, does not seem to us to support it. That case is entitled to the highest respect, and on similar facts we shall submit to its authority; but the learned judges there did not proceed upon the distinction that to make the using of a forged instrument a felonious uttering, the intention of the prisoner must be to get credit upon it by making it operate as such. They appear to have thought that there the evidence was not sufficient to show an intention in the prisoner to induce the prosecutor to advance anything or to obtain credit upon it. The doctrine supposed to be established by that decision is that, in order to make it an uttering, it should be parted with, or tendered, or used in some way to get money or credit upon it. The words "upon it" we consider as equivalent to "by means of it;" otherwise there could hardly be an uttering of Court Rolls and other instruments enumerated in the statute. In the present case it is expressly found that the prisoner placed the receipt in the hands of the prosecutor for the purpose of fraudulently inducing him to advance the money to Gillard. This was a using of the forged receipt to get money upon it, or by means of it, as much as if the prisoner himself had been the borrower of the money, and the receipt had purported that he had paid his rates, and the prosecutor had thereupon advanced him a sum of money and had been cheated out of that money by him. We, therefore, think the conviction was right, according to the decided cases, and, therefore, that it should be affirmed.

Conviction affirmed.

Parry for the prosecution.

Metcalfe for the prisoner.

CENTRAL CRIMINAL COURT.

JUNE SESSION, 1852.

June 18.

(Before the COMMON SERJEANT.)

REG. v. JAMES. (a)

*Practice—Witness giving evidence without being sworn.**On an indictment for felony, after the jury had delivered a verdict of guilty, it was discovered that one of the witnesses for the prosecution had given his evidence without having been previously sworn.**Held, that the proper course to pursue was, to direct the jury to reconsider the case, dismissing from their minds the evidence of that particular witness.*

THE prisoner was indicted for larceny, and the jury returned a verdict of guilty. It was then discovered that one of the witnesses for the prosecution had given his evidence without having been previously sworn.

The Common Serjeant, after having consulted one of the learned judges in the adjoining court, stated that the proper course to pursue was to direct the jury again to deliberate upon the case, and entirely to dismiss from their consideration the evidence that had been given by the unsworn witness.

The jury again found the prisoner guilty.

(a) Reported by B. C. ROBINSON, Esq., Barrister-at-Law.

Ireland.

COURT OF CRIMINAL APPEAL.

(Before LEFROY, C. J., MONAHAN, C. J., CRAMPTON, J.
MOORE, J., and GREENE, B.)

REG. v. JOHN AHEARNE. (a)

Practice—Conspiracy to murder—Trial of one conspirator separately—Judgment.

One of several prisoners indicted for a conspiracy may be tried separately, and, upon conviction, judgment may be passed on him, although the others, who have appeared and pleaded, have not been tried. Rex v. Cook and Others approved of, and the principle of that case applied to the present case.

Where three prisoners have been jointly indicted for a conspiracy to murder, and severally pleaded not guilty, but have severed in their challenges, and the Crown has, consequently, proceeded to try one of such prisoners:

Held, that, upon conviction of such prisoner, judgment must follow, although the others have not been tried, and that the possibility of the other prisoners being found not guilty (although such a verdict would be a ground for reversing the judgment), is not a sufficient reason for holding such judgment, and all the legal consequences of such conviction of such prisoner, irregular.

THE following case was stated by Mr. Justice Moore, for the opinion of the court:—

“The prisoner, John Ahearne, was tried and convicted before me, at the Waterford Assizes, on a charge of conspiring to murder one James Troy, and which murder was effected on the 27th day of October last. The indictment charged that the prisoner, John Ahearne, Maurice Ahearne, and Patrick Power conspired with each other, and with others unknown, to murder the said James Troy.

“The three prisoners named in that indictment were in custody, and were arraigned, and severally pleaded not guilty; but, having refused to join in their challenges, the counsel for the Crown said they would first put the prisoner, John Ahearne, on his trial, and he was accordingly given in charge to the jury sworn to try him.

(a) Reported by P. J. M'KENNA, Esq., Barrister-at-Law.

"The evidence given on the part of the Crown tended to affect the prisoner John, and also the other two prisoners named in the indictment, and made a case to go to the jury as to a conspiracy by the three, but there was no evidence to show that any other person besides those named in the indictment was engaged in the alleged conspiracy.

"The jury having found the prisoner, John Ahearne, to be guilty, he was brought up for judgment on the following day, and Mr. Curtis, the senior counsel for the prisoner, then objected that the prisoner, on the above state of facts, could not by law have been tried alone for the conspiracy, but that the other two persons named in the indictment being amenable, and having pleaded, should have been tried along with him, I took a note of the objection, and passed the usual sentence.

"Since the trial, Mr. Curtis and Mr. Francis Meagher, the other counsel for the prisoner, certified it to me as their opinion that the objection made was a serious one, and ought to be submitted to the Court of Criminal Appeal.

"RICHARD MOORE."

"2nd April, 1852."

Curtis and F. Meagher, for the prisoner.—Judgment here was irregular, as the prisoner was found guilty of conspiring with other persons, who have not been found guilty, and if they are acquitted, he cannot be guilty of conspiring. As to the averment in the indictment that he conspired with others unknown, when there has been no evidence of a conspiracy with others unknown, this cannot cure the irregularity. [MONAHAN, C.J.—The question here is, can the sentence be carried into effect, inasmuch as the others have not been tried?] Ahearne may be executed, and the others may be acquitted; he will then have been hung for a conspiracy with himself, which is absurd. Again, there is a contradiction on the face of the record—he is both innocent and guilty; for the others have not been found guilty, and, until they are, his guilt is not proved; he is therefore innocent, and yet he is found guilty. This case can be distinguished from *Rex v. Kinnersly & Moore*, 1 Strange, 193; *Rex v. Scott and Hams* (3 Burrowes, 1262); *Rex v. Nicholas* (13 East, 412); and *Thody's case*. In all those cases the other defendants were either dead or had not appeared and pleaded. This case may also be distinguished from a case very much resembling it, *Rex v. Cook and others* (5 Bar. & Cress. 538.) That was an indictment against four for a conspiracy; two pleaded not guilty, one pleaded in abatement, to which plea there was a demurrer, and the fourth never appeared. Before the argument of the demurrer, the record was taken down to trial; one of those who pleaded not guilty was acquitted; and the other was found guilty of conspiring with him who pleaded in abatement; the demurrer was afterwards argued, and judgment of *respondeat ouster* given, whereupon a plea of not guilty was pleaded. There, at the time the trial took place, the demurrer was pending, and the

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prisoner was found guilty of conspiring with one who had not pleaded; but here Ahearne is found guilty with others who have pleaded. *Lord Sanchar's case* (9 Cooke's Rep. 119) proves that, if the others be acquitted *ipso facto*, Ahearne will be discharged by it, as it would have the effect of reversing the first conviction. This verdict is, therefore, not conclusive, and may be annulled. [MONAHAN, C. J.—Do you argue that the trial was wrong?] No. [GREEN, B.—What, then, do you think we ought to do?] Judgment ought to be respited. [CRAMPTON, J.—We might be with you if your appeal were to the discretion of the Court; but, as a matter of law, it is otherwise.] These cases are similar to those of accessory and principal. Hale (P. C. 623) says, "It seems necessary in such cases (*i. e.* where accessory is tried before principal) to respite judgment till the principal be convicted and attaint; for, if the principal be after acquitted, that conviction of the accessory is annulled, and no judgment ought to be given."

The *Attorney-General* and *Edmund Hayes*, for the Crown.—The cases referred to in the course of the argument on the other side show that the prisoner might have been tried as he was, and judgment passed on his being convicted. The counsel for the prisoner seek to draw a distinction between cases where those others, whom the prisoner is indicted for conspiring with, have not appeared and pleaded, and the present, where they have appeared and pleaded. There is no good ground for a distinction, and the same argument *ab inconvenienti*, and as to the repugnancy on the face of the record, applies to one as much as to the other. The court will not act on a mere possibility for the benefit of one who has taken a course of his own and has been regularly tried and convicted. This appears from all the cases. It would lead to much greater injustice and inconvenience if the prisoner's application were yielded to; and if the court were to wait till every possibility was exhausted, judgment would never be given or carried out.

LEFROY, C. J., delivered the judgment of the court:—"We are unanimously of opinion that there are no grounds on which judgment in this case should be respited or arrested. In truth, the arguments which have been urged by the prisoner's counsel apply to the respiting of execution, and not of judgment, and the grounds on which alone this application could be yielded to would be equally contrary to the first principles of law and of public justice. It is a first principle that a party who has been properly tried and found guilty is bound by the verdict and all its consequences, unless there be grounds for respiting or arresting judgment. In the cases in which it has been held that, where two are indicted for a conspiracy, or an action has been brought against two, and one has pleaded, and the other does not appear and plead, the reason why judgment against one is good, is given very pointedly in Brook's Abridgment, tit. 'Conspiracy,' p. 21:—"Conspiracy against several; one appears, and pleads not guilty,

and is found guilty with another who does not appear, and the plaintiff recovered judgment, and the defendant brings error because he was condemned, and none of the others, and one alone could not conspire; and yet the judgment was affirmed, because it was found that he and another conspired, and these are two; therefore, this will bind the defendant, but will not the other, who has not appeared and pleaded, but is sufficient against the defendant.' Now, what difference does it make if he be a party outstanding, or one who has appeared and pleaded? It is the fact that there is a verdict against one who is in custody that is held to bind him and make him liable to judgment and all its consequences. If that be so, what grounds are there for granting this application, merely from the possibility of those others escaping, by which this judgment would be annulled? Would not the same objection apply as well to the case of a party who does not appear? If the application to respite execution be made to the proper authorities, it will be for them to say if such postponement should be granted until the result of the second trial be known, as it may fail from the death of a witness, or from other circumstances which would be quite consistent with the prisoner's guilt. The effect, therefore, of stopping the consequences of this verdict until the result of a second trial is known would be that the judgment might never be carried out. It is true that no case precisely in point, where the other conspirators have appeared and pleaded, has been cited, but the inconveniences urged by the counsel for the prisoner as ensuing on judgment being pronounced under such circumstances as those of this case have been pressed as strenuously by counsel in those cases cited in the course of the argument, where such applications as the present have been refused. Again, it may be fairly said, why shall we intend that this verdict will be overturned? That might be accounted for in many ways. A similar application has been disregarded in the case in 5 Barn. & Cress., and when based on the same grounds as the present, similar applications have been always refused. In truth, perhaps, our only hesitation arose from this peculiarity, that the punishment is death, and if sentence be once executed, it would be impossible to repair the injury, if any were done. This inconvenience, however, of a prisoner who has been properly tried being discovered to be innocent is one to which all human tribunals must be subject. The reasons offered here by the prisoner's counsel may be good grounds for respiting execution, but certainly not for respiting or arresting judgment. The conviction and judgment, therefore, must stand."

MONAHAN, C. J., said, that at one time he entertained some doubt as to whether sentence could be passed, as this was the first case of the kind where the parties had been jointly indicted and pleaded. The conclusion, however, which must be drawn from the cases cited was, that if the trial were rightly had, judgment should follow. It had not been argued by the counsel for the prisoner that there had been a mistrial. The court must hold themselves bound

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by the verdict, and they could not come to any other conclusion than that, the man having been properly tried and convicted, judgment must follow.

Ireland.

COURT OF QUEEN'S BENCH.

May 8, 1852.

(Before THE FULL COURT.)

REG. v. BIRCH. (a)

Practice—Postponement of trial—What necessary statements in affidavit for—Prejudices excited by public papers—Absence of witnesses—Recent indisposition of traverser.

Where a traverser seeks to have a postponement of his trial, on the grounds that statements and abusive articles have been inserted in the public papers, reflecting on his character and calculated to damage his case and prejudice the mind of the public against him, and that consequently he cannot have an impartial trial, it is not sufficient to set forth extracts from those articles and the substance of the statements; but the traverser should pledge his oath that he believes he cannot have a fair trial, from the prejudices created by such statements:

Seemle, if a postponement be asked for the traverser on the grounds of the difficulty of obtaining material witnesses, the affidavit should set forth the names and descriptions of such witnesses and state such special circumstances as render the attendance of such witnesses difficult, if not impossible.

Seemle, that the recent indisposition of the traverser, rendering him incapable of conducting his defence in person, is not sufficient to induce the court to postpone the trial, unless, perhaps, under very special circumstances, as no man is bound to defend himself in person.

IN this case the traverser, against whom a criminal information for libel had been granted by this court at the prosecution of Mrs. French, applied in person to have his trial, which had been fixed for the sittings after the present term, postponed.

The traverser moved, on an affidavit made by himself, from which it appeared that certain statements had been made by Lord Naas, in bringing forward a motion in the House of Commons re-

(a) Reported by P. J. M'KENNA, Esq., Barrister-at-Law.

lating to the case of *Birch v. Somerville*, in which the traverser was plaintiff, that these statements reflected on the character of the traverser and of his paper—"The World,"—in which the libels complained of had been inserted, and accusations were made against him that his paper was corrupt and libellous, and that the characters of the most respectable individuals in society were assailed in traverser's paper in the hope of extorting money from those persons; that these accusations and reflections on the traverser were published in all the newspapers of the day, and commented on by some of the leading papers in a manner calculated to damage the plaintiff's character and prejudice the public mind against him. The affidavit further stated that there were persons of high rank required as witnesses by defendant for his defence, whose attendance it would be difficult, if not impossible, to obtain at present. That negotiations were pending until within a short time before the trial, for the purpose of inducing the prosecutrix to withdraw from the prosecution and accept an apology, and that having failed, he (the traverser) was unprepared for his trial; that the traverser had been recently in ill health, and that he intended to conduct his defence in person, and was consequently not in a state of health to do so, and that the application was not made for the purpose of vexatious or unnecessary delay.

LEFROY, C. J.—Do you state in any part of your affidavit that you believe from those prejudices, which you say have been excited against you, that you could not have had a fair trial?

The traverser said that he would not like to swear to that, but he thought that the facts set forth by him in his affidavit were such as must create prejudice against him and prevent him from having an impartial trial.

H. Martley, Q.C., for the prosecution, opposed the application. Mrs. French positively swears in her affidavit that neither she, nor any person on her behalf, or with her consent or knowledge, had entered into any treaty with the traverser, or any person on his behalf, or received any communication from him. None of the grounds relied on by the traverser for obtaining this postponement had been sufficiently clearly stated.

The traverser said that he had recently sent an influential person with a letter to the father of the lady to induce him to interfere for him (the traverser), but he declined doing so, and said that the matter was entirely in the hands of the prosecutrix and her legal advisers, and that he would not interfere.

LEFROY, C. J.—The application to postpone the trial in this case must be disposed of upon the case made by the affidavit, which suggests four grounds for the postponement. A suggestion is made, not sustained by the oath of the party putting it forward, that such a prejudice now exists that he could not have a fair trial. I have already remarked on the insufficiency of the affidavit on that point. The other grounds suggested by him are equally vague and unsatisfactory. He has stated a difficulty with regard to witnesses, but he does not disclose who those witnesses are, their names

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or their stations. Again, he further states, as another reason for postponing his trial, that negotiations were pending, and that he had consequently not prepared for his defence, and would be taken unawares and off his guard if his case were not postponed. If this were so, it might be a fair ground for acceding to this application; but that statement is positively and with the utmost particularity contradicted by Mrs. French. Another ground suggested was, that the traverser was unable to undertake his own defence from recent indisposition. Now, no man is bound to be his own defender, and I cannot consider that as a sufficient reason for postponing this trial. I do not mean to say that Mr. Birch may not be able to make a case which would warrant this court in postponement; but we are all of opinion that, on the affidavit before us, he has failed in making out a case.

Application accordingly refused.

[On the following Thursday, the day fixed for the trial, the traverser appeared and withdrew his plea of not guilty, and, after apologizing by his counsel, pleaded guilty.—REF.]

Ireland.

COMMISSION COURT, GREEN-STREET.

October 25, 1852.

(Before the LORD CHIEF BARON, and RICHARDS, B.)

REG. v. THOMAS AND CATHERINE SANSFIELD. (a)

Pleading—Indictment under 11 & 12 Vict. c. 46—Joinder of counts.

Where, under the 11 & 12 Vict. c. 46, s. 3, a count for feloniously receiving property knowing it to be stolen is joined with a count for feloniously stealing, it must appear with sufficient certainty that the property is the same in each count.

*The prisoners were indicted for feloniously stealing 100*l.* in money, one purse, &c. the property of R. G. There was a second count for receiving 35*l.* in money, one purse, &c. the property of R. G. aforesaid, then lately before feloniously stolen.*

Held, that it did not sufficiently appear that the last-mentioned property was part of, or the same as, that contained in the first count, and that consequently the prisoners were not bound to plead to both counts, and that the Crown should elect as to which count they would try the prisoners upon.

THE prisoners were charged upon the following indictment:—
The first count was in the usual form, stealing, &c., from the dwelling-house of Rachel Gilbert, at, &c., 100*l.* in money, one

(a) Reported by P. J. M'KENNA, Esq., Barrister-at-law.

purse, &c., of the said Rachel Gilbert. The second count was as follows: "and the jurors aforesaid, upon their oath aforesaid, do further present that the said Catherine Sarsfield and Thomas Sarsfield, on the said day and year aforesaid, at Bremon aforesaid, in the said county of Dublin, 35*l.* in money, one smelling-box, one purse, one opera glass, and one bag, of the money, goods, and chattels of the said Rachel Gilbert, *then lately before feloniously stolen*, &c., feloniously did receive, &c., knowing, &c.

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J. A. Curran, for the prisoners, objected that he was not bound to plead to the indictment, as for all that appeared on the face of the indictment, there were two substantive different offences joined in the same indictment. The 11 & 12 Vict. c. 46, s. 3, allows, with a count for receiving stolen property, a count for feloniously stealing the same property to be joined, but it does not appear that the property in the second count is the same as that in the first. The Crown must, therefore, elect as to which count they will proceed on.

Smyly, Q. C.—The words in the second count, "then lately before feloniously stolen," sufficiently show the property to be the same as that in the first.

Figot, C. B.—The second count is a substantive indictment.

The COURT, after looking into the statute, ruled that the Crown should elect.

The Clerk of the Crown had another indictment ready, on which the prisoners were tried. The jury acquitted Thomas Sarsfield, and found the female prisoner guilty.

The Honble. John Plunkett, Q. C., and *Smyly, Q. C.*, for the Crown.

J. A. Curran, for the prisoners.

[The 11 & 12 Vict. c. 46, s. 3, after reciting that it is not permitted to join to a count for stealing property a count for receiving the same property, knowing it to be stolen, whereby justice is defeated, enacts, "that from and after the passing of this act, in every indictment for feloniously stealing property, it shall be lawful to add a count for feloniously receiving the same property, knowing it to have been stolen; and in any indictment for feloniously receiving property, knowing it to have been stolen, it shall be lawful to add a count for feloniously stealing the same property: and when any such indictment shall have been preferred and found against any person, the prosecutor shall not be put to his election, but it shall be lawful for the jury who shall try the same to find a verdict of guilty either of stealing the property or of receiving it, knowing it to have been stolen: and if such indictment shall have been found and preferred against two or more persons, it shall be lawful for the jury who shall try the same to find all or any of the said persons guilty either of stealing the property, or of receiving it, knowing it to have been stolen, or to find one or more of such persons guilty of stealing the property, and the other or others of them guilty of receiving it, knowing it to have been stolen."]

OXFORD CIRCUIT.

WORCESTER SPRING ASSIZES, 1852.

March 6.

(Before Mr. JUSTICE WIGHTMAN.)

REG. v. DALE. (a)

*Attempt to administer poison, 7 Will. 4 & 1 Vict. c. 85, s. 3.**Putting poison in a place where it is likely to be found and taken, if done with an intent to murder, is an attempt to administer poison within the statute 7 Will. 4 & 1 Vict. c. 85, s. 3.**Therefore, when the prisoner purchased some "salts of sorrel," and put it in the prosecutor's sugar basin, mixing it with the sugar, and the prosecutor subsequently put some of the mixture into his tea, but on tasting it, discovered that there was something wrong, and on investigation the poison was discovered :**Held, that this constituted an attempt to administer poison, and the only question for the jury, if the act was proved, was, whether it was done with intent to commit murder.*

THE prisoner, Sarah Dale, was indicted for having, on the 26th of February, 1852, at Dudley, attempted to administer to one William Lawson a large quantity of a certain deadly poison, called salts of sorrel (binoxide of potash), with intent to murder the said William Lawson.

Streeten for the prosecution.*Huddleston* (at the request of the learned judge), undertook the defence.

The prisoner and her husband lodged at the house of the prosecutor. On the 20th of February, a few days before the day of the alleged offence, a quarrel arose between the prosecutor and the prisoner's husband, and the latter was subsequently committed to prison for want of sureties to keep the peace. The prosecutor also, on the same day, gave the prisoner and her husband a week's notice to quit. On the 25th of February, the prisoner went to a chemist's shop, and asked for a pennyworth of salts of lemon, to clean bonnets. The shopman said, "What you want is salts of sorrel;" and the prisoner said "Yes." A pennyworth (a quarter of an ounce) was sold her, and she was told it was not a thing to

(a) Reported by J. E. DAVIS, Esq., Barrister-at-law.

be played with, and should be kept out of the children's way. On the following day the prosecutor and his wife had some tea with their dinner, and the prosecutor, finding something wrong in the taste, called out to a lodger who had previously used the teapot. At the same time the prisoner entered the room, and threw the tea away out of the cups, and cleaned them with hot water. The prosecutor observed, "There must be poison somewhere." The prisoner said, "It may be in the sugar," and, taking up the sugar basin, said, "It is in here." The basin was taken to a chemist's, where it was found to contain salts of sorrel. The sugar and all weighed two ounces. Evidence was adduced to show the character of the poison. It appeared that in one instance an ounce had failed to destroy life; in another, half-an-ounce had proved fatal in a debilitated subject. It would produce sickness and nausea.

The prisoner made statements to the police constable. She said, "The man (the prosecutor) drove me to it. He sent my husband to gaol. I have not a friend in the world." Being told she must be taken to a druggist's shop to see where she purchased the poison, she said, "I bought it at Kendrick's;" and in answer to questions, said, "I put it in the sugar basin while the old woman was sitting by the fire."

At the close of the case for the prosecution,

Huddleston submitted that there was no evidence of any attempt to administer within the meaning of the statute 7 Will. 4 & 1 Vict. c. 85, s. 3, which defined the offence to be an attempt to administer to any person any poison, &c. (b). The question had been mooted on several occasions whether the mere *placing* of poison is an administering or an attempt to administer, but had not been expressly decided. In the case of *Reg. v. Williams and another* (1 C. & Kir. p. 589), the prisoners were indicted under this statute for attempting to administer to one Thomas Vaughan a large quantity of a certain deadly poison called white arsenic, with intent to kill and murder him. The facts of that case were these:—The two prisoners, Ann Williams and John Rees, who co-habited together, procured the arsenic and gave it in a paper to a man named Edwards, informing him it was poison, and that they wanted to kill Thomas and Mary Vaughan, the parents of the female prisoner. They directed Edwards to keep the arsenic in the palm of his hand, and go to Vaughan's house and call for a pint of beer, which Edwards and the Vaughans were to drink together, and after having done so Edwards was to call for another pint of beer, and take an opportunity of slipping the arsenic into

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(b) "Whoever shall attempt to administer to any person any poison or other destructive thing, or shall shoot at any person, or shall, by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall attempt to drown, suffocate, or strangle any person, with intent, in any of the cases aforesaid, to commit the crime of murder, shall, although no bodily injury shall be effected, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for the term of his or her natural life, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years."—7 Will. 4 & 1 Vict. c. 85, s. 3.

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it, undiscovered by the Vaughans, to whom he was to hand it, that they might drink it and be poisoned. Edwards, instead of obeying these instructions, told the Vaughans what had passed, and gave up the poison to them. The prisoners were convicted, but Mr. Baron Rolfe respited the judgment, in order to consult the judges on the point, whether the foregoing facts warranted the conviction of the prisoners for an attempt to administer poison; for if Edwards had administered the poison, he would have been the sole principal felon, and the prisoners would have been accessories before the fact. The question, therefore, was, whether the delivery of poison to an agent, with directions to him to cause it to be administered to another, under such circumstances that, if administered, the agent would be the sole principal felon, was an "attempt to administer" within the 3rd section of the stat. 1 Vict. c. 85; and the fifteen judges held that the conviction was wrong.

It makes no difference whether the person makes use of an individual as an agent, or an article as an agent. To administer is to do a positive act, and an attempt to administer requires an attempt to do the act directly. So also in *Reg. v. Cadman* (R. & M. 14), the prisoner was indicted, under the 43 Geo. 3, c. 58, for administering white arsenic and sulphate of copper, with intent to murder. It appeared that the prisoner pulled a white bread cake, containing the poison, out of his pocket, and pinched off a bit from the outside of it, and gave it to the prosecutrix to eat, and she took it and put it into her mouth, but spit it out again, and did not swallow any part,—the opinion of the twelve was taken upon the question whether, under the circumstances of the case, the offence was complete within the statute. The judges seemed to think swallowing not essential; but they were of opinion that a mere delivery to the woman did not constitute an administering, and that upon a statute so highly penal they ought not to go beyond what was meant by the word "administering;" and a pardon was therefore recommended. (c) So in *Russell on Crimes*, by Greaves, vol. 1, p. 733, it is laid down that a mere delivery into the hands did not constitute an administering of poison within the 43 Geo. 3, c. 58.

(c) Such is the report of the case in *Ryan v. Moody*. But as reported in Carrington's Supplement, p. 237, the decision of the judges was exactly the reverse, holding that the poison had not been administered because it had not been taken into the stomach, and this is the correct version of the case. See observations of Mr. J. James Allan Park, in *Rex v. Harley* (4 C. & P. 370.) *Cadman's case* is, therefore, of little value now, as attempting to administer poison has been made a felony, and Lord Campbell's act (14 & 15 Vict. c. 100, s. 9), enacts, "that if on the trial of any person charged with any felony or misdemeanor, it shall appear to the jury upon the evidence that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the same, such person shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is not guilty of the felony or misdemeanor charged, but is guilty of an attempt to commit the same, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular felony or misdemeanor charged in the said indictment; and no person so tried as herein lastly mentioned, shall be liable to be afterwards prosecuted for an attempt to commit the felony or misdemeanor for which he was so tried."—[J. E. D.]

WIGHTMAN, J.—There are a great many reported cases where the poison was placed in a situation for persons to take it.

Streeten, for the prosecution.—*Reg. v. Cadman* was for actually administering, and not for attempting to administer. *Harley's case* (4 C. & P. 369) is precisely in point. There a servant put poison into a coffee-pot which contained coffee, and when her mistress came down to breakfast, the servant told her that she had put the coffee-pot by the side of the grate for her (the mistress's) breakfast, and the mistress thereupon drank the coffee, and it was held that this was a "causing the poison to be taken," within the stat. 9 Geo. 4, c. 31, s. 11.

Huddleston, in reply.—*Harley's case* differed from the present. There was in that case an attempt to administer and to induce the prisoner's mistress to take the poison. There must be some act done.

WIGHTMAN, J.—In my opinion there is an act in this case, by putting the poison in the sugar basin.

Huddleston then addressed the jury.

WIGHTMAN, J., in summing up the case, said:—There are two questions in this case involving others. The first is, whether the prisoner did attempt to administer a poison? If she did, the next is whether she made that attempt with intent to murder. If you are not satisfied on either of those points, you will acquit the prisoner. With respect to the first point,—Did she attempt to administer a poison? (The learned judge then went through the evidence.) With regard to the statements made to the police officer, his lordship observed that, according to the strict line of duty, it was improper in the constable to put the questions to the prisoner, but his conduct did not amount to a cross-questioning. She told him she put it in the sugar. If she put it there intending that it should be taken, that is an attempt to administer it. Then, was it with intent to murder? The means used were not sufficient, for it required a larger quantity of the ingredient to take away life, but the prisoner might not have known what quantity was requisite for that purpose. On the other hand, she may have known, and, knowing, may have intended simply to annoy the prosecutor in revenge for his treatment of her husband.

The jury acquitted the prisoner.

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WORCESTER SPRING ASSIZES, 1852.

March 6.

(Before Mr. JUSTICE WIGHTMAN.)

REG. v. JOHNSON. (a)

Forgery—Evidence of uttering.

On a charge of uttering an order or request for the delivery of goods, proof of the receipt of the goods by the prisoner is no evidence of the utterance.

Where, therefore, the prisoner was indicted in one count for forging, and in another count for uttering, an order for goods to be forwarded by train, and the evidence failed to show that the order was written by the prisoner, and no direct proof was offered of the utterance :

Held, that the uttering could not be inferred from proof that the prisoner attended at the station to which the goods were forwarded, and inquired for parcels addressed as mentioned in the order, and represented to the porter that they were required for a funeral, for which the goods ordered were appropriate ; and, consequently, that there was no evidence to go to the jury against the prisoner.

THE prisoner, Henry Johnson, was indicted for forging and uttering certain requests or orders, for the delivery of goods.

The first count of the indictment alleged that the prisoner, on the 27th of September, 1851, forged a certain request for the delivery of goods with intent to defraud Thomas Cook and others.

A second count alleged that the prisoner, on the same day, forged a certain other request for the delivery of goods, with intent to defraud John Bradbury and others.

In other counts of the indictment, the documents were described as "orders" for the delivery of goods, and the prisoner was also charged with uttering them knowing them to be forged.

Huddleston, for the prosecution.

W. H. Cooke, for the prisoner.

On the part of the prosecution it was proved, that the following

(a) Reported by J. E. DAVIES, Esq., Barrister-at-Law.

order was received by Messrs. Cook, Sons, and Co., wholesale mercers, London, by post, on the 27th of September, 1851:—

“ Bromsgrove, 26th September.

“ Please send by first train to-morrow as under:—

112 yards of black-edged Gros de Naples,

40 yards of six-quarter Paramatta.

“(Signed) D. T. THOMAS.”

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Messrs. Cook and Sons, having a customer of the name of Thomas at Bromsgrove, duly executed the order, and forwarded the goods in a box by railway as directed.

Mr. Thomas, a draper of Bromsgrove, proved that he was the only person of the name carrying on the drapery business at that town, that he dealt with Messrs. Cook and Sons, but the order in question was not in his handwriting.

A witness named Giles stated his belief that the order was in the prisoner's handwriting.

A similar order, the subject of the second count, for forty yards of Paramatta and other articles, was received on the same day by Messrs. Bradbury, Greatorex, and Beall, and executed by them, being forwarded in a paper parcel. Mr. Thomas proved that this order was not in his handwriting, but the witness Giles declined to say that it was in the prisoner's handwriting.

James Meyer, a railway porter at the Bromsgrove station, stated that on the evening of the 27th of September, two parcels arrived at the station directed to Mr. D. T. Thomas, Bromsgrove, the one a box, the other a paper parcel. The prisoner came in and asked if there were some parcels for Mr. Thomas, and, being told there were, inquired the charge for carriage. The witness informed him, but said he had not time to enter the parcels in the books, but would send them up into the town by the next omnibus, after the arrival of another train. The prisoner said that would not do, as the things were wanted for a funeral, and he could not go without them. The witness consequently delivered them to the driver of the omnibus then going to the town, and gave him the entry-book to get the signature of the party, the prisoner saying he would pay the carriage of them on their delivery in the town. He proceeded in the omnibus; and, from the evidence of the driver and others, it appeared the goods were ultimately given up to him.

The prisoner was taken into custody some time after in London. On the back of a letter found in his possession the name of “Bradbury, Greatorex, and Beall,” was found written.

The first order having been put in and read by the officer of the court,

Huddleston proposed to have the other order read also.

W. H. Cooke objected, that the prisoner had not been connected with that order at all.

Huddleston.—There is no direct proof of the forgery or uttering, but the prisoner having inquired for the parcels, and said they

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were wanting for a funeral and he could not wait, showed that he had a knowledge of the contents of the forged document received by Messrs. Bradbury and Co. The name of the firm was also found on a letter in the prisoner's possession.

WIGHTMAN, J.—If the evidence of the receipt of the goods was given as proof of the uttering, that is to say, to show a guilty knowledge, I am of opinion it is no evidence in either case of the utterance by the prisoner; neither order has been traced to him beyond the proof of the handwriting in the one case. If no proof of handwriting had been given, I should have rejected the evidence of the receipt of the goods altogether. As it is, I shall tell the jury that there is no evidence—not the slightest—of the uttering of either order. There is the evidence of forgery in the one case, but no evidence at all in the other. This is not a charge for obtaining goods by false pretences. A great deal of evidence has been given which no doubt was thought applicable, but I am at a loss to see how it can be applied to this case. It is no proof of forgery or uttering. But for the evidence of the forgery in the one case, I should have been bound to tell the jury that there was not a scintilla of evidence against the prisoner; for the proof of the receipt of the goods is no evidence of uttering the order.

The case accordingly went to the jury on the evidence of the handwriting of the order to Messrs. Cook and Sons, and the prisoner was ultimately convicted.

OXFORD CIRCUIT.

WORCESTER SPRING ASSIZES, 1852.

March 8.

(Before Mr. JUSTICE WIGHTMAN.)

REG. v. NEWALL. (a)

Perjury—Evidence—Proof of charge before justices, upon the hearing of which perjury is alleged.

The defendant was indicted for perjury alleged to have been committed by him on the hearing before justices of a summons charging him with being the father of an illegitimate child:

Held, that, to support the indictment, it was necessary to give evidence of the charge made by the mother, either by production of the original order made thereon, or by giving secondary evidence of the summons after notice to the defendant to produce it; and that, in the absence of such notice, it was not sufficient to produce the minutes of the proceedings by the clerk to the justices, those minutes being of no greater authority than the notes of a short-hand writer.

THE defendant was indicted for perjury. The indictment alleged that "at a petty sessions of the peace holden in and for the borough of Kidderminster, in the said county [of Worcester], on the 6th day of February, A. D. 1852, before William Boycott, the younger, William Nicholls, and Henry Talbot, esquires, justices of our said Lady the Queen, assigned to keep the peace in and for the said borough, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said borough committed, Richard Newall appeared in pursuance of a certain summons requiring him to answer any complaint which one Ann Jones should then and there make against him touching her having been delivered of a bastard child, of which she alleged him to be the father, and for the maintenance whereof she had given proof that he did, within twelve calendar months after its birth, pay money; and the said Richard Newall then and there, upon the hearing of the said complaint, offered himself as a witness for and on behalf of himself, the said Richard Newall, and was then and there duly sworn," &c. The indictment then proceeded to allege, that upon the said hearing certain questions

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

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therein specified became and were material; that the defendant swore in the negative of those questions; and proceeding in the usual manner to affirm the truth of the propositions, negating what the defendant had sworn.

On the part of the prosecution, the magistrates' clerk was called as a witness. He produced a book containing the minutes made by him of the examination of the witnesses before the magistrates. The entry was headed—

“Ann Jones
v.
Richard Newall, } Affiliation.”

The evidence was then set out.

“Ann Jones, of,” &c. “I first became acquainted,” &c. “Richard Newall, the defendant, sworn, says,—I know the complainant,” &c.

It being admitted that there was no other evidence forthcoming of the proceedings before the justices,

Huddleston, for the defendant, submitted that the original summons must be produced, or notice to produce it served on the defendant.

Powell, for the prosecution, submitted that that was not necessary, and cited *Reg. v. Newman* (21 L. J. 75, M. C.); where, on an indictment for perjury at the Central Criminal Court, charging the prisoner with having committed the perjury on the trial of one D., on a previous indictment for a misdemeanor in the same court, it was held that the minutes and entries of the trial of D., made by the officer of the court, and produced by him on the trial of the indictment for perjury, were good evidence to prove that D. had been so tried, as alleged, and that it was not necessary to produce any record or certificate of the trial of D. In the present case, moreover, the court would take judicial notice of the statute giving justices the power to hear the complaint of the mothers of illegitimate children, and to make orders upon the putative fathers for their maintenance.

WIGHTMAN, J.—The statute provides that, upon complaint by the mother, the justice shall have power to summon the putative father before him, and, upon the appearance of the person so summoned, or upon proof of the service of such summons, to hear and adjudicate upon the case. A summons is therefore necessary to give the magistrates jurisdiction; and to prove that they had jurisdiction in this case you must prove that the defendant was duly summoned, either by production of the summons or by secondary evidence after notice to the defendant to produce it. The minutes of examination in this case are no more than the minutes of a short-hand writer, and only answer the purpose of refreshing the memory of the witness.

The witness, in answer to questions put to him by the learned judge, said that the magistrates made an order on the defendant. There were three original orders. One original order was deposited with the clerk of the peace, another was served on the

defendant, and the third was kept by the person serving him. No notice to produce had been given to the defendant of either the summons or order, and neither of the other orders were in court.

WIGHTMAN, J.—What evidence is there of the charge? If you could show the woman's charge, then the witness might state what the defendant said. But here you have neither the woman's charge, the summons, nor any notice to produce, nor the order, but a mere note of the evidence.

Powell applied to have the trial postponed, in order that the necessary evidence might be procured; but

WIGHTMAN, J. refused the application, the defendant being in charge.—(To the jury:)—It is to be regretted that the ends of justice may be defeated in this case; but the evidence is deficient for want of a notice to the defendant to produce.

The defendant was accordingly acquitted.

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OXFORD CIRCUIT.

STAFFORD SPRING ASSIZES, 1852.

March 12.

(Before Mr. BARON PLATT.)

REG. v. DEAN. (a)

Rape—Evidence.

Admissibility of evidence to prove statement of the prosecutrix denied by her, with reference to a former transaction affecting her chastity. The prosecutrix, on a charge of rape, having, on cross-examination, said that she had herself been charged with stealing money, and on that occasion had accounted to a police constable for the possession of the money, by stating that it was given her for not complaining of a person who had insulted her by solicitations against her chastity, but denied that she had said the money was given her for having connexion with him;

Held, that the prisoner could not call the constable as a witness, to contradict the prosecutrix, by proving that she had said that the money was given her for that purpose.

THE prosecutrix, who was a servant girl, was cross-examined as to a charge of stealing money made against her by a former mistress, and the statements she had made on that occasion. It

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

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appeared that her mistress had lost the sum of fifteen shillings, and, suspecting that the prosecutrix had taken it, sent for Burrowes, a police constable, who searched her box of clothes. The prosecutrix, who was present at the search, snatched up a paper packet, which, on being taken from her hand, was found to contain fifteen shillings. She was asked to account for the possession of that sum, and now gave the following version of what she said to the police officer on that occasion. "I told Burrowes that a gentleman gave me fifteen shillings for insulting me. I told him (Burrowes) that the gentleman had first offered me five shillings and then fifteen. Burrowes asked me what the money was for. I did not say it was for having connexion with me, but I said it was for not telling of the gentleman insulting me. Burrowes asked if the gentleman had not had connexion with me. I said he had not. The gentleman did not have connexion with me. He caught hold of me and said he would have connexion with me. I refused. He did nothing but ask. He offered me five shillings, because I said I would have him taken up. I found fifteen shillings in my basket the next morning.

Huddleston, at the close of the case for the prosecution, and before addressing the jury, said, he wished to have the opinion of the learned judge whether he should be at liberty to call Burrowes as a witness, to contradict the prosecutrix with reference to the statement she now says she made to him, denying that she told him that the gentleman had given her the fifteen shillings for having connexion with her. There was a distinction between this case and those in which it was held that a witness could not be called to prove some specific act of prostitution denied by the prosecutrix. Here the question was as to a statement made by the prosecutrix closely affecting her general character as a chaste woman.

Mr. BARON PLATT said he would consult his learned brother Mr. Justice Wightman, sitting at *Nisi Prius*. On his return he said, my brother Wightman thinks you cannot call the constable to contradict the statement of the prosecutrix, but with regard to her general character you may call him or any other witnesses.

The prisoner was acquitted.

OXFORD CIRCUIT.

STAFFORD SPRING ASSIZES, 1852.

March 13.

(Before Mr. BARON PLATT.)

REG. v. FOSTER. (a)

*Maliciously damaging machines—Statute 7 & 8 Geo. 4, c. 30, s. 4—
What is a “damage” within the statute—Machine or engine—Malice
—Intent to destroy or to render useless.*

1. *The silling beneath an engine employed in crushing puddled balls of iron, and rolling them into bars, is a part of a machine or engine within the statute 7 & 8 Geo. 4, c. 30, s. 4, which makes it felony if any person shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any threshing machine or any machine or engine, whether fixed or moveable, prepared for or employed in any manufacture.*
2. *A displacement of a machine is within the same statute; therefore placing a sledge-hammer within the jaws of the squeezers of the machine, which had the effect of displacing and depressing the silling and brickwork underneath, causing a trifling injury, but not preventing the working of the machine, is a damage within the statute.*
3. *The intent to destroy or to render useless is a question for the jury, and may be inferred from the mere act causing the damage.*
4. *It is unnecessary under this statute to prove express malice, for everything wilfully done, if injurious, must be inferred to be done with malice.*

THE prisoner, Abraham Foster, was indicted for damaging a machine employed in manufacture, the property of Bernard Gilpin and another, on the 12th of February, 1852, at the parish of Cannock, in the county of Stafford.

The first count of the indictment alleged that the prisoner on the 12th day of February, 1852, at the parish of Cannock, in the county of Stafford, a certain machine then and there being employed in a certain manufacture, to wit, in the manufacture of iron (the said machine not being employed in the manufacture of silk, woollen, linen or cotton goods, or goods of any one or more of those materials mixed with each other or mixed with any other material, or any framework knitted-piece, stocking, hose, or lace),

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

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of the value of 200*l.*, the property of Bernard Gilpin and another, and then and there feloniously, unlawfully and maliciously did damage, with intent then and there to destroy, the said machine, against the form of the statute, &c.

In a second count, the damage was alleged to be done with intent to render the machine useless.

A third count charged the prisoner with feloniously, unlawfully, and maliciously damaging, with intent to destroy and render useless, a certain machine of Bernard Gilpin and another, then and there being, &c.

George Brough, the engineer to Messrs. Gilpin and another, the prosecutors, who were manufacturers of iron, was examined as a witness, and stated that at half-past five o'clock on the morning of the 12th of February, he was at the door of the rolling-mill engine-house, and within sight of the *puddling furnace* and *squeezers*. He saw the prisoner, who was a workman in the employment of the prosecutors, coming down the *race* (an iron pathway on which the *puddling balls* are conveyed from the furnace to the squeezers) with a sledge-hammer, which he was drawing along with tongs towards the squeezers, the same way as if he was engaged in drawing a puddling ball. He brought the sledge-hammer in this manner, and put it between the jaws of the squeezers, the engine being then in motion. There is a sort of step in the lower jaw of the squeezers between the narrow and wide part, and the practice is to hold the puddling balls with the tongs in the wider part of the squeezers against the step, until by the action of the squeezers it is partially crushed, and then to remove it into the upper or narrower part of the squeezers. By this method the strain on the engine (worked by steam power) which would result from forcing the balls at once into the angle of the squeezers is avoided. The prisoner put the hammer into the upper part of the squeezers, and the witness immediately heard a loud report, as of a blow, shaking the building. The witness called out to the prisoner, who remained near the squeezers, "There, young man, you have done something now." He made no reply, but took the hammer from the squeezers with the tongs, which he continued to hold. After the report the witness examined the squeezers, but perceived no mark. He then went into the *squeezer-hole* and examined the *carriage* of the *spur-wheel* of the engine and the *rests*. They were displaced. The *silling* of the carriage was also displaced. These injuries would not have occurred if the sledge-hammer had not been put in. They could not have resulted from an ordinary puddling ball being placed in the squeezers.

On cross-examination, the witness said that the connecting rod was displaced and lifted up, but the engine was not so much displaced as to prevent the work from going on. It continued to roll *puddled iron bars*, which are bars that are rolled out and cut up and heated again. The engine continued to work for two days, and then the usual stopping day intervened. No part of the machinery was broken, only displaced.

Poyner, the millwright, described the injuries. The oak silling and the brickwork under it had given way and sunk, and the carriage went down with it. Two days before, every thing was in order. The spur was new. The actual damage done to the squeezers was three shillings, and the total damage to the machine five shillings. The value of the whole machine was five thousand pounds. He included the silling as part of the machine. If the silling had not given way, the probable damage would have been upwards of one thousand pounds.

The sledge-hammer was produced. Its weight was fourteen or fifteen pounds.

When the prisoner was taken into custody, he said, "I took the tongs to fetch the sledge to clean my bars, and took hold of the 'stail' (the handle of the hammer) with the tongs, and took it down the race and put it under the squeezers the same as a ball."

Rupert Kettle, at the close of the case for the prosecution, objected that the offence charged was not made out. First, the act must be shown to have been done wilfully and maliciously, and express malice must be proved. In the case of *Rex v. Newill*, R. & M. C. C. 458, (b) which was an indictment under the same statute (7 & 8 Geo. 4, c. 30,) it was held, that an intention to injure another person, and not the owner of the property, was sufficient to support the indictment charging the intent to be to injure the owner; but still express malice to some one was proved in that case. The 25th section of the statute did not get rid of the objection, for it contemplated express malice to some person. (c) There was no proof that the defendant knew the consequences that would follow from his act.

PLATT, B.—Everything wilfully done, if injurious, must be inferred to be done with malice.

Kettle.—Another point was, that there was no damage to any machine or engine within the statute. (d) The injury was to the silling, and not to the machine.

PLATT, B.—You say that the machine is only that part in motion, and not what it rests upon.

Kettle.—Exactly so.

(b) In that case the prisoner was convicted on an indictment charging him with maliciously, &c. setting fire with intent to injure Joseph Chettle. The property fired belonged to him, but the jury found the prisoner guilty with intent to injure Charles Smith, and that there was no intent to injure Chettle, except so far as by law it must be so considered. It was held that the conviction was good.

(c) "Every punishment and forfeiture by this act imposed on any person maliciously committing any offence, whether the same be punishable upon indictment or upon summary conviction, shall equally apply and be enforced, whether the offence shall be committed from malice conceived against the owner of the property in respect of which it shall be committed, or otherwise."—7 & 8 Geo. 4, c. 30, s. 25.

(d) "If any person shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any threshing machine, or any machine or engine, whether fixed or moveable, prepared for or employed in any manufacture whatsoever (except the manufacture of silk, woollen, linen, or cotton goods, or goods of any one or more of those materials mixed with each other, or mixed with any other material, or any frame-work knitted piece, stocking, hose or lace), every such offender shall be guilty of felony," &c.—7 & 8 Geo. 4, c. 30, s. 4.

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PLATT, B.—The whole machine does not move when in work. What do you say to the parts of the machine not in motion?

Kettle.—The whole machine sank together. Another objection is founded upon the nature of the injury. The statute speaks of cutting, breaking, or destroying, or damaging with intent to destroy or to render useless. In this case there was no cutting, no breakage, no destruction; only a displacement. A displacement is not within the statute. A fourth point was, that the injury must be done with intent that a particular consequence should ensue. There was no intent to destroy in this case. The prosecution was bound to show an intent to destroy the machine or render it useless, or at least to prove facts and circumstances from which that intent may be inferred.

Vaughan for the prosecution.—The indictment is sustained by the evidence which brings the case within the statute. Besides cutting, breaking and destroying, the statute says “or damage.” The effect of the prisoner’s act might have been only a displacement; but if that displacement damaged the machine, that is sufficient.

PLATT, B.—You contend that if the machine were removed and placed in the yard of the manufactory, that would be within the act.

Vaughan.—Yes. The term “damage” was introduced to include other offences not included in the words cutting, breaking, or destroying. If a machine is bent, that would be damage falling within the purview of the act.

PLATT, B.—The millwright says the sill is part of the machine. I doubt, however, whether a displacement is sufficient, but I shall not decide definitively here. I shall reserve the point, and speak to my learned brother Mr. Justice Wightman about it. With respect to the intent, that is for the jury to judge of.

The trial then proceeded, and the prisoner was convicted.

On the following day, Mr. Baron Platt said he had consulted with Mr. Justice Wightman on Abraham Foster’s case, and he was of opinion that a dislocation or disarrangement of a machine was within the statute, and that the sill was to be considered as part of the machine; consequently the prisoner was rightly convicted.

OXFORD CIRCUIT.

STAFFORD SPRING ASSIZES, 1852.

March 16.

(Before GREAVES, Q. C.)

REG. v. BAILEY. (a)

False pretence—Variance between averment and evidence.—Power of amendment under the 14 & 15 Vict. c. 100, s. 1.

In an indictment for obtaining money by false pretences, the pretence alleged was, that the defendant had been to B. on behalf of the prosecutrix, and had served a certain order of affiliation on one J. B., and that he was entitled to receive for serving the said order the sum of five shillings:

Held, that this averment was not supported by proof that the defendant said that he had been with the order to B. to serve J. B. and left it with the landlady where J. B. lodged, he being out, &c.

Held, also, that this was not an amendable variance within the meaning of the statute 14 & 15 Vict. c. 100, s. 1.

THE prisoner, George Edward Bailey, was indicted for obtaining money by means of false pretences.

The indictment alleged that he pretended to Emma Fletcher, of West Bromwich, &c. "that he, the said George Edward Bailey, had been to Bretley, in Derbyshire, on behalf of the said Emma Fletcher, and served a certain order of affiliation on one John Bell (meaning John Bell of Bretley aforesaid, named in the said order of affiliation,) and that he, the said George Edward Bailey, was then entitled to have and receive of the said Emma Fletcher, for serving the said order, the sum of 5s.; whereas in truth and in fact the said George Edward Bailey had not been to Bretley, in Derbyshire, on behalf of the said Emma Fletcher, to serve the said order of affiliation on the said John Bell; and whereas the said George Edward Bailey was not then entitled to have and receive of the said Emma Fletcher the sum of 5s., by means of which false pretence the said George Edward Bailey obtained from the said Emma Fletcher two pieces of the current coin called half-crowns, of the moneys of the said Emma Fletcher," &c.

Emma Fletcher, the prosecutrix, deposed that the prisoner made the following statement to her:—"He told me he had been with the order to Bretley, to serve one Bell, and left it with the land-

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

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lady at the Chesterfield Arms there, where Bell lodged, he being out; that he would not overcharge for his journey," &c.

Huddleston, for the prisoner, submitted that the allegation in the indictment was not supported by the evidence. The indictment alleged that the defendant pretended that he had served the order of affiliation personally on John Bell, whereas what the defendant said was, that he had left the order with a third person to give to him.

Scotland, for the prosecution, contended that the substantial charge was sufficiently proved. The defendant clearly intended to cause the prosecutrix to believe that the order had reached Bell's hands, and that a service had been effected by his instrumentality.

GREAVES, Q. C., after retiring to consult Mr. Baron Platt, sitting in the Crown Court, said he was sorry to stop a case on this point, but both he and Mr. Baron Platt were clearly of opinion that the allegation in the indictment meant a personal service, and that consequently the pretence was not proved as alleged.

Scotland then applied to amend the indictment by making the allegation correspond with the evidence.

GREAVES, Q. C., said that he was afraid that he had no power to order the amendment under the recent act, 14 & 15 Vict. c. 100, s. 1. As originally drawn, the bill provided for such a case, but those words had been struck out in the House of Lords. The section, as it now stands, only provides for a variance between the statement in the indictment, "and the evidence offered in proof thereof, in the name of any county, riding, division, city, borough, town corporate, parish, township, or place mentioned or described in any such indictment, or in the name or description of any person or persons, body politic or corporate, therein stated or alleged to be the owner or owners of any property, real or personal, which shall form the subject of any offence charged therein, or in the name or description of any person or persons, body politic or corporate, therein stated or alleged to be injured or damaged, or intended to be injured or damaged by the commission of such offence, or in the christian name or surname, or both christian name and surname, or other description whatsoever, of any person or persons whomsoever therein named or described, or in the name or description of any matter or thing whatsoever therein named or described, or in the ownership of any property named or described therein." In this case the variance could not be said to be in the *name or description of any matter or thing* named or described in the indictment. He was not sorry this case had occurred, for it illustrated the utility and necessity for the provision originally contained in the bill.

The prisoner was therefore acquitted.

HOME CIRCUIT.

GUILDFORD, 1852.

August 3.

(Before Mr. JUSTICE MAULE)

REG. v. SMITH AND ANOTHER. (a)

13 Eliz. c. 5, s. 3—*Indictment—Fraudulent conveyance.**For any offence within 13 Eliz. c. 5, s. 3, the offender may be proceeded against by indictment.**In such an indictment it is not necessary to set out the specific facts which constitute the fraud.*

THE defendants were charged upon the following indictment under the 3rd section of the 13 Eliz. c. 5, (b) for making a fraudulent conveyance.

Surrey, } The jurors for our Lady the Queen upon their oath
to wit, } present, that heretofore and before the committing of Indictment.
the offence hereinafter next mentioned, to wit, on the 1st day of January in the year of our Lord 1850, and on divers other days and times heretofore, Wm. Smith hereinafter mentioned had committed and caused to be committed near to and in the neighbourhood of certain, to wit, twenty-two messuages, of and belonging to one T. C. M., to wit, at West Hill Grove, in the parish of Battersea, in the county of Surrey, divers nuisances and injurious acts, matters and things, to the great damage and injury of the said T. C. M., to wit, to the amount of 300*l*. and upwards. Wherefore the said T. C. M. heretofore, to wit, on the 27th day of January in the year of our Lord 1851, did commence a certain action on the case against the said W. S., to wit, in the court of our Lady the Queen before the Queen herself, whereby to recover from the said W. S. the lawful damages sustained by the said T. C. M. for and in respect of the said nuisances and injurious acts, matters and things aforesaid.

“That thereupon such proceedings were had and taken in the said action, that afterwards, to wit, at the Assizes holden at

(a) Reported by B. C. ROBINSON, Esq., Barrister-at-law.

(b) It has been thought right to set out this indictment at some length, as it is the only form of the kind to be found in the books. It was drawn, after much consideration, by the Deputy Clerk of Assize on the Home Circuit, and is believed to be the only instance in which an attempt has been made to render this section the basis of a criminal prosecution, a fact somewhat remarkable, considering the extensive nature of its operation. The facts of the case are sufficiently shown by the indictment itself.

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Kingston-on-Thames, in and for the county of Surrey aforesaid, the said action came on to be tried and then and there, before the Right Honourable John Lord Campbell, and the Right Honourable Sir James Parke, Knight, then and there being Her Majesty's Justices assigned to take the Assizes in and for the said county, was by a certain jury of the country in due form of law tried, upon which said trial the said jury did find and say upon their oaths that the said W. S. was guilty of the grievances, nuisances and injurious acts, matters and things aforesaid; and assessed the damages of the said T. C. M. on occasion thereof, over and above his costs and charges by him about his said suit in that behalf expended, to 300*l.*, and assessed those costs and charges at 40*s.*

"That during the pendency of the said suit, to wit, from the commencement of the said suit until the 28th day of March in the year of our Lord 1851, the said W. C. was seised in his demesne as of fee of and in certain lands, hereditaments, and premises within the said county, to wit, at the parish of Battersea, in the county of Surrey.

Indictment.

"That the said W. S. late of the parish of Wandsworth, in the county aforesaid, labourer, and S. Everett, late of the same place, labourer, devising and wickedly intending and contriving to injure, prejudice and aggrieve the said T. C. M., and to defraud and deprive him of any damages and costs to be recovered in the said action whilst the same was so pending as aforesaid, and immediately before the same came on for trial as aforesaid, and in anticipation of the said verdict, to wit, on the day and year last aforesaid, at the parish last aforesaid, in the county aforesaid, did devise, contrive and prepare, and cause to be prepared, a certain feigned, covinous and fraudulent alienation and conveyance, whereby the said W. S. expressed and declared to appoint and grant to the said S. E., the lands, tenements and hereditaments aforesaid, to hold to him the said S. E. and his heirs for ever.

"That the said W. S. and S. E., wickedly and fraudulently devising, contriving and intending as aforesaid, on the day and year aforesaid, at the parish aforesaid, in the county aforesaid, unlawfully, knowingly, wilfully, fraudulently, covinously and injuriously did execute and become parties to the said alienation and conveyance, and then and there wittingly and willingly did put in ure, avow, maintain, justify and defend the same alienation and conveyance, as true, simple, and done and made *bonâ fide* and upon good consideration, and as a conveyance and alienation whereby the said W. S. had really and *bonâ fide* appointed and granted to the said S. E. the lands, tenements and hereditaments aforesaid, to hold to him the said S. E. and his heirs for ever. Whereas in truth and in fact the said alienation and conveyance was not nor is it *bonâ fide*. And whereas the truth was and is that the same was so devised, contrived and executed as aforesaid, of malice, fraud, collusion and guile, and to the end, purpose and intent to delay and hinder the said T. C. M. of and in his said just and lawful action and the said damages by reason of the premises :

to the great let and hinderance of the due course and execution of law and justice, to the great injury of the said T. C. M., against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

Second Count, as in the first count, to the asterisk, and continued thus:—That the said W. S. and S. E., devising and wickedly intending and contriving to injure, prejudice and aggrieve the said T. C. M., and to defraud and deprive him of any damages and costs to be recovered in the said action whilst the same was so pending as aforesaid, and immediately before the same came on for trial as aforesaid, and in anticipation of the said verdict, to wit, on the day and year last aforesaid, at the parish of Wandsworth, in the county aforesaid, did devise, contrive and prepare, and cause to be prepared, a fraudulent alienation and conveyance of the lands, tenements and hereditaments aforesaid. That the said W. S. and S. E. wickedly and fraudulently devising, contriving and intending as aforesaid, on the day and year aforesaid, at the parish last aforesaid, in the county aforesaid, unlawfully, knowingly, wilfully, fraudulently, covinously and injuriously did execute and become parties to the said alienation and conveyance, and then and there wittingly and willingly did put in ure, avow, maintain, justify and defend the same alienation and conveyance, as true, simple, and done and made *bonâ fide* and upon good consideration, and as a conveyance and alienation, whereby the said W. S. had really and *bonâ fide aliened and conveyed* to the said S. E. the lands, tenements and hereditaments aforesaid, to hold to him the said S. E. and his heirs for ever; whereas in truth, &c. as in first count.

Third Count to the asterisk.—That during the pendency of the said action and in anticipation of the said verdict, to wit, on the day and year last aforesaid, a certain feigned, covinous and fraudulent alienation and conveyance had been devised, contrived, prepared and executed by and between the said W. S. and the said S. E., whereby the said W. S. was expressed and declared to appoint and grant and make over to the said S. E., the lands, tenements, and hereditaments aforesaid, to the said S. E. and his heirs for ever. That the said W. S. and S. E., wickedly devising, contriving and intending to injure, prejudice and aggrieve him, and to deprive him of the said damages and costs in the said action so found as aforesaid, afterwards, to wit, on the 26th day of April, in the year of our Lord 1851, at the parish of Wandsworth, in the county aforesaid, unlawfully, wittingly and willingly did put in ure, avow, maintain, justify and defend the same alienation and conveyance, as true, simple, and done and made *bonâ fide*, and upon good consideration, and as a conveyance and alienation, whereby the said W. S. had really and *bonâ fide* appointed, granted and made over to the said S. E., the lands, tenements and hereditaments aforesaid, to hold to him the said S. E. and his heirs for ever; whereas in truth and in fact, &c.

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Fourth Count, as first count to asterisk.—That during the pending of the said action and in anticipation of the said verdict, to wit, on the day and year last aforesaid, a certain feigned, covinous and fraudulent alienation and conveyance had been devised, contrived, prepared and executed by and between the said W. S. and the said S. E., of the lands, tenements and hereditaments aforesaid, to the said S. E. and his heirs for ever. That the said W. S. and S. E., wickedly devising, contriving and intending to injure, prejudice and aggrieve the said T. C. M., and defraud and deprive him of the said damages and costs in the said action so found as aforesaid, afterwards, to wit, on the 26th day of April, in the year of our Lord 1851, at the parish of Wandsworth aforesaid, in the county aforesaid, unlawfully, wittingly and willingly did put in ure, avow, maintain, justify and defend the same alienation and conveyance, as true, simple, and done and made *bonâ fide*, and upon good consideration, and as a conveyance and alienation whereby the said W. S. had really and *bonâ fide* granted, bargained, aliened, released, conveyed and made over to the said S. E., the lands, tenements and hereditaments aforesaid, to hold to him the said S. E. and his heirs for ever, &c.

Fifth Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said W. S. and the said S. E., and divers evil-disposed persons wickedly intending to injure the said T. C. M., on the 28th day of March, in the year of our Lord 1851, with force and arms, at the parish of Wandsworth, in the county aforesaid, did amongst themselves conspire, combine, confederate and agree together, fraudulently, maliciously and covinously to delay, hinder and defraud the said T. C. M. of all such damages which he might thereafter recover against the said W. S. in a certain action which was then pending in the court of our said Lady the Queen, before the Queen herself, wherein the said T. C. M. was plaintiff and the said W. S. was defendant, to the evil example of all others in the like case offending, against the peace of our said Lady the Queen, her crown and dignity.

Sixth Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said W. S. and the said S. E., and divers evil-disposed persons wickedly intending to injure the said T. C. M., on the 28th day of March, in the year of our Lord 1851, with force and arms, at the parish of Wandsworth, in the county aforesaid, did amongst themselves conspire, combine, confederate and agree together, fraudulently, maliciously and covinously to delay, hinder and defraud the creditors of the said W. S., to the evil example of all others in the like case offending, against the peace of our Lady the Queen, her crown and dignity.

Seventh Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said W. S. and the said S. E., and divers evil-disposed persons wickedly intending to injure the said T. C. M., on the 28th day of March, in the year of our Lord 1851, with force and arms, at the parish of Wandsworth, in the

county aforesaid, did amongst themselves conspire, combine, confederate and agree together, fraudulently, maliciously and covinously to cheat and defraud the said T. C. M. of the fruits, and of all benefits and advantages of any execution or executions which he might thereafter lawfully issue or cause to be issued against the lands or tenements of the said W. S., to the evil example of all others in the like case offending, against the peace of our Lady the Queen, her crown and dignity.

Eighth Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said W. S. and the said S. E., and divers evil-disposed persons, wickedly intending to injure the said T. C. M. on the 28th day of March, in the year of our Lord 1851, with force and arms, at the parish of Wandsworth, in the county aforesaid, did amongst themselves conspire, combine, confederate and agree together, fraudulently, maliciously and covinously to cheat, injure, impoverish, prejudice and defraud the said T. C. M., to the evil example of all others in the like case offending, &c.

Ninth Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that heretofore and before and at the time of the commission of the offence hereinafter next mentioned, to wit, on the 28th day of March, in the year of our Lord 1851, a certain action on the case was pending between the said W. S. and the said T. C. M., to wit, in Her Majesty's Court of Queen's Bench, at Westminster, whereby the said T. C. M. sought to recover from the said W. S., damages for certain nuisances and injurious acts, matters and things alleged to have been done and committed to the injury of the said T. C. M. That the said W. S. and S. E., and divers evil-disposed persons, whilst the said action was so pending as aforesaid, to wit, on the day and year aforesaid, at the parish last aforesaid, in the county aforesaid, unlawfully and wickedly did conspire, combine, confederate and agree together, by divers unlawful, false, fraudulent and indirect ways, means, devices, stratagems and contrivances, to impede, hinder, prevent and delay the said T. C. M. in the said action, and in the prosecution thereof, and in the recovery of damages for the nuisances and injurious acts, matters and things aforesaid, to the great injury of the said T. C. M., against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

Loche (for the defence), moved after verdict, in arrest of judgment, on the ground that no proceeding by indictment was contemplated by the statute. The third section was in these words: "That all and every the parties to such feigned, covinous or fraudulent feoffment, gift, grant, alienation, bargain, conveyance, bonds, suits, judgments, executions and other things before expressed, and being privy and knowing of the same or any of them, which at any time after the 10th day of June next coming, shall wittingly and willingly put in, ure, avow, maintain, justify or defend the same, or any of them, as true, simple, and done, had

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or made *bond fide*, and upon good consideration; or shall alien or assign any the lands, tenements, goods, leases, or other things before mentioned, to him or them conveyed as is aforesaid, or any part thereof, shall incur the penalty or forfeiture of one year's value of the said lands, tenements and hereditaments, leases, rents, commons or other profits, of or out of the same, and the whole value of the said goods and chattels, and also of so much moneys as are or shall be contained in any such covinous and feigned bond; the one moiety whereof to be to the Queen's Majesty, her heirs and successors, and the other moiety to the party or parties grieved by such feigned and fraudulent feoffment, gift, grant, alienation, bargain, conveyance, bonds, suits, judgments, executions, leases, rents, commons, profits, charges, and other things aforesaid, to be recovered in any of the Queen's Courts of Record by action of debt, bill, plaint or information, wherein no essoign, protection or wager of law shall be admitted to the defendant or defendants, and also being thereof lawfully convicted, shall suffer imprisonment for one half year, without bail or mainprize." The offence if any, of which the defendants have been guilty, is entirely created by this statute, and the section, after stating what the offence is, declares that for committing it, the offender shall incur a penalty or forfeiture of one year's value to be recovered by action. There is no mention whatever of indictment, but there is a reference to a civil proceeding. The rule with respect to the mode of proceeding where new offences are created by statute, is laid down in Russell on Crimes, p. 50, in the following terms: "Where an offence was punishable by a common law proceeding before the passing of a statute which prescribes a particular remedy by a summary proceeding, then either method may be pursued, as the particular remedy is cumulative and does not exclude the common law punishment. But where a statute creates a new offence by prohibiting and making unlawful what was lawful before, and appoints a particular remedy against such new offence, by a particular sanction and particular method of proceeding, such method must be pursued and no other. The mention of other methods of proceeding impliedly excludes that by indictment, unless such methods are given by a separate and substantive clause." There is another objection to this indictment, that it only states generally that this deed was fraudulent, not stating why or in what respect it was so. In *Re Peck*, 9 A. & E. 686, it was held that a count charging that the defendants unlawfully conspired to defraud divers persons who should bargain with them for the sale of merchandize, of great quantities of such merchandize without paying for the same, with intent to obtain to themselves money and other profit, was bad for not showing by what means the parties were to be defrauded.

James (with whom was *Hawkins* for the prosecution), was not called upon.

MAULE, J.—As to the first point that the section of the act

of Parliament does not speak of indictment, I think it clear that that proceeding is the proper one. The section mentions the offence, and then with reference to the punishment, declares that the "offender being thereof convicted, shall suffer imprisonment for one half year." That must mean "being convicted thereof," before some competent tribunal. If the statute had pointed out some other means, for instance, on conviction before a justice of the peace on a summary hearing, it would probably have restricted proceedings to that particular course. It is true that the statute does mention a civil action, but that has nothing whatever to do with the half-year's imprisonment, but merely has reference to the recovery of damages by action, in any of the Courts at Westminster. It surely could never be contended that the meaning of the statute is, that when such a court has given judgment for the damages, it should proceed to award to the defendant the punishment of imprisonment for half a year. The humanity of our law has established a clear distinction between civil and criminal proceedings, and this act of Parliament cannot be supposed to sanction so anomalous a course as that. It is obvious that by some means or another, imprisonment is to be awarded after a proper conviction before a recognised tribunal. How then can that be done, otherwise than by indictment?

Locke submitted, that, at all events it was intended that no criminal proceeding should be resorted to, until after the recovery of damages in a civil action, the words "and also" near the end of the section, seemed to point to such a construction.

MAULE, J.—I do not think so; those words do not necessarily so restrict the procedure, and there seems to be no reason why it should be so restricted. Then as to the second point. The case cited is one where persons were said to have conspired to do a thing not necessarily unlawful in itself, such as, for instance, preventing a person from having execution of a judgment. There is nothing unlawful in that. It is precisely what the learned counsel, and those who instruct him, are doing at this moment, seeking to prevent the operation of a judgment by arresting it. In the present case, the very words of the statute are adopted. What is charged therefore is necessarily unlawful, for the statute has made it so.

Judgment for the Crown.

James, Q. C., and Hawkins for the prosecution.

Locke for the defence.

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OXFORD CIRCUIT.

STAFFORDSHIRE SPRING ASSIZES, 1852.

Stafford, March 13.

(Before Mr. BARON PLATT.)

REG. v. WHITEHOUSE AND OTHERS. (a)

Conspiracy to defraud lodging-house keepers and tradesmen—False pretences—Indictment—Evidence.

1. *An indictment alleged that the defendants I. W., C. W. and J. W., being persons in indigent circumstances, and intending to defraud tradesmen who should supply them with goods upon credit, conspired to cause J. W. to be reputed and believed to be a person of considerable property, and in opulent circumstances, for the purpose and with the intent of cheating and defrauding divers persons being tradesmen, who should bargain with them for the sale to the said I. W., of goods, &c. the property of such last-mentioned persons, of great quantities of such goods, without paying for the same, with intent to obtain to themselves money and other profits.*

Held, that this indictment was not supported by proof that the defendants C. W. and J. W. being the wife and daughter of the other defendant I. W., represented that they were in independent circumstances, their income being interest of money received monthly; at another time, when engaging lodgings, that they were not in the habit of living in lodgings, and that they obtained various goods from tradesmen on credit, under circumstances that shewed an intent to defraud, but no proof being adduced that those goods were obtained by reason of any of those general statements.

2. *Another count alleged a similar conspiracy to represent I. W. to be a person of considerable property and fit to be trusted, and by means thereof to cheat and defraud persons who should let to the said I. W. lodgings for hire, of divers large sums of money, being the sums agreed to be paid for the hire of such lodgings.*

Held, that this count was not supported by proof of the representations above mentioned, and that the defendants went to various houses taking lodgings, and quitting them without notice or payment; for, if an indictable offence at all, the object of the defendants was to obtain possession of the lodgings, and not to deprive him of the price or profits of the rooms.

3. *A count charging, the defendants with conspiring, by divers subtle means and false pretences, to obtain goods and chattels from H. B., a tradesman, without paying for them, with intent to defraud him thereof,*

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

is supported by proof of overt acts, from which a conspiracy may be inferred, without proof of any such false pretence as is required in an ordinary indictment for obtaining goods by false pretences.

4. *Quære, whether a count charging a conspiracy by divers subtle means and false pretences, to obtain goods and chattels from divers persons being tradesmen, without paying for them, with intent to defraud them of the same, is bad in arrest of judgment or otherwise, for not setting out the names of the parties defrauded or intended to be defrauded, or making excuse for not doing so.*

Semble, that the ordinary form of indictment for false pretences, which after stating the false pretence, alleges that, by means of which false pretence, the defendants obtained the goods or money, is sufficient, and that the substitution of the words "by reason of" for "by means of" is equally unobjectionable.

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THE defendants, Joseph Whitehouse, Caroline Whitehouse, and Jane Whitehouse, were indicted for conspiracy. The indictment contained seven counts.

The 1st count alleged, that the defendants being evil-disposed persons, and in low and indigent circumstances, and wickedly devising and intending to defraud divers persons being tradesmen, who should supply them with goods and chattels and merchandize upon credit, on the 1st day of November, A.D. 1850, with force and arms, &c., did amongst themselves conspire, combine, confederate and agree together and cause the said Joseph Whitehouse to be reputed and believed to be a person of considerable property and in opulent circumstances, for the purpose and with the intent of cheating and defrauding divers persons being tradesmen, who should bargain with them for the sale to the said Joseph Whitehouse, of goods and chattels, the property of such last mentioned persons, of great quantities of such goods and chattels, without paying for the same, with intent to obtain to themselves money and other profit, to the great damage of such last-mentioned persons, and against the peace of our Lady the Queen, &c.

The 2nd count charged, that the defendants being persons in indigent circumstances, on the day and year aforesaid, with force and arms, &c., did amongst themselves conspire, combine, confederate and agree together, to cause the said Joseph Whitehouse to be reputed and to be believed to be, a person of considerable property and fit to be trusted, and by means thereof to cheat and defraud divers persons, who should let to the said Joseph Whitehouse lodgings for hire, of divers large sums of money, being the sums agreed to be paid for the hire of such lodgings, to the great damage of such last-mentioned persons, and against the peace, &c.

The 3rd count charged the defendants with conspiring, by divers subtle means and false pretences, to obtain goods and chattels from divers persons being tradesmen, without paying for them, with intent to defraud them of the same.

The 4th count was similar to the third, but charged the conspiracy to be, to obtain the goods and chattels from one Henry

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Banks, a tradesman, without paying for them, with intent to defraud him thereof.

The 5th and 6th counts, related to the obtaining of lodgings with the intent, as in the 2nd count, to defraud the owners of the hire of them.

The 7th count, which the grand jury ignored as to the two defendants Joseph Whitehouse and Jane Whitehouse, alleged that the defendants on the 21st of February, 1851, unlawfully did falsely pretend to one George Cooper, that the said Joseph Whitehouse was then a clerk in a police office at Wolverhampton, by reason of which said false pretence, the said Joseph Whitehouse, Caroline Whitehouse and Jane Whitehouse, did then and there unlawfully obtain from the said George Cooper, a large quantity of bread, to the value of one pound thirteen shillings and ninepence, with intent then and there to cheat and defraud him the said George Cooper, of the same; whereas in truth and in fact, the said Joseph Whitehouse was not then a clerk in a police office at Wolverhampton.

Greaves, Q. C., and Hodgson for the prosecution.

Huddleston and P. M'Mahon for the defendants.

Greaves, in opening the case, said that the charge against the defendants, who stood in the relationship to each other of husband, wife and daughter, presented two shapes. First, a conspiracy to induce lodging-house keepers to let lodgings, and secondly, to cheat tradesmen of their goods. The acts were themselves lawful, but the object was unlawful. The case was analogous in principle to a transaction which occurred a few years ago in Berkshire, where, on a turn-out of labourers, they went about begging in numbers to farm houses, for the purpose of intimidating the inhabitants to give them food and money, although they abstained from actual violence. The following is an outline of the evidence :—

George Cole, the occupier of a house at Wolverhampton, stated that the defendants, Caroline and Jane Whitehouse, came on the 17th of November, 1850, and the first named engaged lodgings at seven shillings and sixpence a week, saying they would be required for a month or longer. On the 19th, the wife and daughter took possession, bringing with them merely a bundle and a small drum basket. They were followed soon after by the husband. The wife said their luggage was coming from Liverpool; but none arrived. On the 26th of November, while the daughter engaged the witness in conversation down stairs, saying she was going to get her father's tea ready, the father and mother left the house, and did not return. They never paid anything for the lodgings.

Other witnesses proved similar transactions at Wolverhampton, in February and March, 1851, with regard to lodgings. On one occasion, the wife said they were going to take a public-house if they could get one to suit them; at another place, that they were in independent circumstances, their income being interest of money received monthly. She also said at one place, that as they had not been in the habit of living in lodgings, they wanted to be

comfortable, and engaged lodgings at ten shillings a week, to be paid monthly. The luggage was always represented as being expected the next day, by railway or carrier. The wife was the person who engaged the lodgings and made these statements, generally in the presence of her daughter. The husband did not appear to follow any occupation. On one occasion they left the lodgings at dusk, without notice or payment; at another place, tradesmen made applications for money, and Mrs. Bradney, the landlady, wishing to get rid of her lodgers, advised them to go, and they left, the wife saying she would pay on the following Monday. On cross-examination of this witness, it appeared that she did not let her rooms to the defendants until she had made enquiries from the husband's brother, a person in a respectable station of life.

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Ebenezer Hunter proved that after the defendants left the last lodgings, the wife applied to him to become tenant of a house in St. Mark's Place, Wolverhampton, at the yearly rent of 18*l*., and said her husband was in independent circumstances. An agreement was drawn up on the part of the defendants, but ultimately the landlord prepared one, which the husband, Joseph Whitehouse, signed. In a short time he expressed a wish to leave, saying, he was very much annoyed in the house. The witness consented, provided the defendant would get a fresh tenant. In the mean time, however, the defendants were taken up on the present charges.

In order to show that the defendants did these overt acts in pursuance of a previous conspiracy, a witness was called, who stated that in September, 1850, the mother and daughter took lodgings at Birkenhead, in the name of Taylor, from September until Christmas, at the rent of thirty-five shillings a week. The mother said she had some luggage coming by railway, but none came, and in about a week they left, without notice or payment. Upon an intimation from the learned judge, that, although this evidence might be admissible, it ought not to be given, it was not pursued farther.

With respect to the other branch of the case, a number of witnesses were called, who proved the order for and delivery of goods to the defendants.

Sarah Cooper, the wife of George Cooper, a baker, said that on the 21st of February, 1851, Caroline Whitehouse bought some trifling articles, and paid for them. She came again, and asked to be supplied monthly. The witness said she would consider the proposition. Mrs. Whitehouse came again, and, in the presence of George Cooper, stated that her husband was a clerk at the police station in Garrick-street, Wolverhampton, and the money would be quite safe. Witness believed the statement, and let the defendant have bread on the credit of that statement, to the amount of 1*l*. 13*s*. 9*d*., extending over a period of about a fortnight. The daughter, Jane, on another occasion, came to the shop, and in the course of conversation said that her father was a clerk at

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the police station, but did not say where. She said, "there is enough coming in to keep us."

George Cooper, the husband of the last witness, proved that Caroline Whitehouse said that he need not be afraid about the money, her husband was a clerk at the police station, and received his salary monthly, and therefore did not like to be troubled oftener. In consequence of this, credit was given, but was afterwards discontinued; witness had not received any part of the 1*l.* 13*s.* 9*d.*

Colonel Hogg, superintendent of police at Wolverhampton, proved that the defendant Joseph Whitehouse, was not in any situation in, or connected with, the police.

A number of tradespeople were examined, comprising drapers, dressmakers, hosiers, ironmongers, brokers, &c. In the majority of these cases the goods appeared to have been ordered by the mother or daughter, and supplied in the usual manner on credit, and booked by the tradesmen until the end of the half year. The false statements of the defendants were in general made as reasons for asking to have goods supplied on credit. In some instances the credit had not expired when the defendants were apprehended by the police. The only instance in which Joseph Whitehouse had ordered goods, was on the 10th of March, 1851, when he ordered two loads of coal, which were delivered at the house in St. Mark's Place. Mrs. Whitehouse had previously asked the coal-dealer's terms, and it was agreed that the payment was to be made quarterly. The coal supplied on the 10th of March the witness understood was to be paid for on the 25th. They were not paid for, and another load was ordered on the 12th of April. The witness trusted them because Mrs. Whitehouse mentioned the names of some relatives of known respectability.

In the course of the evidence, Mr. Baron Platt observed, that the statements were only excuses for non-payment.

Greaves, Q. C., submitted, that if the defendants went to a tradesman with an intention to obtain goods without paying for them, that it constituted an indictable offence.

PLATT, B.—If that be so, half the world may be indicted; you have only to place them in the dock instead of in the Insolvent Court.

Greaves.—Yes. If there is a conspiracy to obtain goods in that way.

Henry Banks, an ironmonger at Wolverhampton, proved that Jane Whitehouse, on the 20th of March, ordered a kitchen fender, door mat, brushes and other articles, which were sent to St. Mark's Place. On the 31st of March she ordered a pair of brass candlesticks, a copper tea-kettle, an enamelled iron saucepan, a broom, and other articles, to the amount of 3*l.* 8*s.* 8*d.* The amount was booked in the ordinary way. The shopman stated, that Mrs. Whitehouse had previously called on the 12th of March, and ordered a few things to be sent to St. Mark's Place, stating that they would be paid for in the middle of April. On these occa-

sions the mother would sometimes go into the shop leaving the daughter outside, and sometimes the daughter went in, leaving the mother outside; at other times they both went in together.

It was proved that Jane Whitehouse, on the 18th of April, pawned the pair of brass candlesticks purchased on the 31st of March, for three shillings, and Mrs. Whitehouse, about the 3rd of April, sold the enamelled saucepan to a broker, for eightpence, stating that she had bought it in Birmingham for one shilling and ninepence. Between the 3rd and the 10th, she and Jane brought various other articles, such as tubs, bowls, and tin candlesticks for sale, and Mrs. Whitehouse said she should have a good deal of furniture for sale in a few days, and invited the broker to come to St. Mark's Place and look at it.

Evidence was adduced to show that no goods arrived at, or were lying at the carriers' offices, according to the statement of the mother to the various lodging-house keepers and other persons.

The defendants were apprehended on the 19th of April, at the house in St. Mark's Place. The furniture and articles purchased a short before, were found packed up, with direction cards to Birmingham on them. Joseph Whitehouse was in the act of tying up a hamper. When taken to the police station, he asked permission to give his son, who was with him, a tobacco box, saying, "He smokes as well as I do." The constable said, "I smoke too; let me look at your tobacco." On opening the box it was found to contain six sovereigns, and a great number of pawn tickets, some of which were identified as having been given to the wife and daughter for the articles purchased and pawned by them.

At the close of the case for the prosecution, *M' Mahon* objected that none of the counts charging a conspiracy to cheat, had been made out to the extent of a *prima facie* case. There was nothing but an ordinary case of credit. The only case in which credit had been shown to have been obtained by means of a false statement, was that of Cooper the baker, where it was certainly said that credit was given on account of the representation by Mrs. Whitehouse, that her husband was a clerk in a police station. That case was covered by the 7th count for false pretences, and that count was ignored by the grand jury as to the husband and daughter. He wished to know on what part of the indictment the prosecution relied.

PLATT, B. after referring to the indictment, enquired from the counsel for the prosecution, what evidence there was on the 1st and 2nd counts, charging the defendants with a conspiracy, to cause the husband to be reputed and believed to be a person of considerable property. The 3rd count is the only one, as it appears to me, I can submit to the jury. That alleges a conspiracy to obtain goods by false pretences. The falsity of those pretences must be shown. That has been done in one instance. I can never hold that if parties conspire to tell the truth, and obtain goods or money, they are liable to be indicted if the goods are not paid for.

Greaves, Q. C., submitted there was evidence on each count.

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The crime charged is a conspiracy to obtain goods with intent to defraud, not a charge of obtaining them by false pretences. The crime consists of two branches, the conspiracy, and the unlawful means. The Berkshire robbery case is in point. There the offence was the conspiring to induce persons to part with their money, by going in a body from house to house. So here, the question for the jury is, whether there was a conspiracy to obtain the goods without paying for them, no matter what the means used. The conspiracy must be in all cases inferred from the acts; but suppose the defendants had entered into an agreement in writing in these terms, "We hereby agree to cheat and defraud the house-keepers and tradesmen of Wolverhampton, by obtaining possession of rooms, houses, and goods without paying for them," would not that be indictable? If so, the existence of a conspiracy for that purpose might be proved in this as in other cases, by overt acts.

Hodgson on the same side, referred to *Reg. v. Rowlands and others.* (b)

M^cMahon in reply.—The counsel for the prosecution are rather trying the question, whether these counts are good in arrest of judgment, than the point now before the court as to the evidence. There is no evidence of anything like a conspiracy apart from the overt acts. With regard to the 1st count, there is no evidence even of any overt act. So with regard to the 2nd count. There is not a tittle of evidence that either of the defendants represented the husband as a man of property. With reference to the 3rd and 4th counts, there was no fact from which a conspiracy could be inferred. The acts of each defendant were distinct, for the attempt to prove a conspiracy from the fact that a daughter remained outside looking in at the window, while the mother did the errands, was absurd. The 5th and 6th counts also failed on the same ground: there is no evidence to show a conspiracy. The 7th count was ignored as to two of the defendants, and the only case to go to the jury was on that count against Caroline.

Mr. BARON PLATT said, he should leave the case to the jury on the 3rd and 4th counts, and also on the 7th count as against Caroline. In summing up the case he said, "The 1st count charges the defendants, that they, being persons in indigent circumstances, and intending to defraud tradesmen who should supply them with goods upon credit, conspired together to cause Joseph Whitehouse to be reputed a person of considerable property, and in opulent circumstances, for the purpose of cheating and defrauding the tradesmen of their goods, without paying for them. Now there certainly is no evidence of any conspiracy to represent Joseph Whitehouse as a person of considerable property. So with respect to the 2nd count. The conspiracy is there laid to be, to cause Joseph Whitehouse to be reputed and to be believed to be a person of considerable property, and fit to be trusted, and by means thereof, to cheat and defraud persons who should let

(b) See *ante*, vol. v. p. 437.

him lodgings, of the amount of the hire of such lodgings. There is no evidence of such a conspiracy. It is the first time I ever heard of such a count. It is impossible it can be maintained. That is my opinion. The object of the defendants was to obtain occupation and possession of the lodgings, and to deprive the landlord of the use of the rooms, not to deprive him of the price; that was only incidental to their occupation. They had no object in depriving him of the profits of the room apart from their own occupation of them. With regard to the 3rd count, that charges the defendants with conspiring, by subtle means and devices, and false pretences, to obtain goods from tradesmen without paying for them, with intent to defraud them. This is a general count. The 4th count is confined to a particular transaction, and alleges a conspiracy to obtain goods in that way from Mr. Banks, and defraud him in that way. In these counts, although in form alleging false pretences, it is not necessary to prove a false pretence in law; those are general words of act—like subtle means and devices. The 5th and 6th counts relate to the lodgings, and you will dismiss them from your minds, on the grounds I have already stated with reference to the 2nd count. The 7th count, relating to Cooper the baker, although preferred against all three, is only to be considered by you with reference to Caroline Whitehouse. The grand jury have thought that there is no ground for including the husband and daughter. This is an important fact. Still the act by Caroline as to Cooper, might be the result of a conspiracy among all three.

Commenting upon the evidence, the learned judge said, there is undoubtedly a great deal of difficulty thrown on the defendants to meet the charges against them. That which had been adduced with reference to transactions at Birkenhead, two years ago, had been given up. It would throw the onus unfairly on the prisoners, and therefore it had been very properly abandoned. No evidence had been adduced, on the part of the prosecution, to contradict the statements of the defendants, that they had friends and relatives at Dudley, Tipton, and other places. The prosecution ought to do this. It is like the case of a prisoner who says, "I bought this article from so and so, at such a place." It is then the duty of the prosecutor to prove that such a statement is untrue; but otherwise, where the prisoner says "I picked it up in the street." So in this case, where statements are made that the husband has property sufficient to pay, that interest is received monthly, and so on, there the prosecution cannot disprove it. If true, it lies on the defendants to prove it. The only evidence against Joseph Whitehouse is that of packing up the goods, and his possession of the pawn tickets and attempt to get rid of them. With respect to the daughter, it would be for the jury to say how far she might be acting under the control of her father or mother, or both of them.

The question finally left to the jury was, whether the defen-

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dants agreed together for the purpose of obtaining goods without paying for them. The jury found all the defendants guilty on the 3rd and 4th counts, and Caroline guilty on the 7th count.

Huddleston and *M' Mahon* then moved in arrest of judgment on the 3rd count, on the authority of the case of *King v. The Queen*, 13 L. J. (N.S.) 172, M. C. (c) which decided that it was necessary to set out the names of the parties defrauded, or else to make excuse, or account in some way for not mentioning them. The 3rd count in this case was very general, and did not set out any names, nor allege that the names were unknown to the jurors. With respect to the 4th count, his lordship had directed that it was unnecessary to prove any false pretence, but as there was no evidence of a conspiracy, independently of the overt acts, the finding of the jury appeared to have been under a misapprehension. It is submitted that an actual false pretence must be proved under this count. His lordship would probably reserve this question as it was very important. In *Rex v. Biers*, 1 A. & Ellis, 327, (d) it was held that a count charging the defendants with conspiracy, by "divers false, wilful, and subtle stratagems and contrivances, as much as in them lay, to injure, oppress, aggrieve and impoverish E. W. and J. W., and to cheat

(c) In that case, the indictment alleged "that the defendants did unlawfully combine, conspire, confederate, and agree together, to cheat and defraud certain liege subjects of our Lady the Queen, being tradesmen, of divers large quantities of their goods and chattels." The indictment then alleged, that one of the defendants afterwards "in pursuance of the said conspiracy," fraudulently ordered and obtained upon credit, from W. A. W. and other tradesmen, whose names were set out, and others to the jurors unknown, divers goods of great value, and in order that the said goods might be taken in execution and sold as thereafter mentioned, caused the same to be delivered at the said defendant's house, and that no payment was made for them. The indictment then alleged that all the defendants, in further pursuance of the said conspiracy, did cause collusive judgments to be signed by the other defendants, against the defendant who obtained the goods, in actions also collusively commenced in respect of fictitious debts, and collusively sued out writs of execution, by virtue of which the said goods, so fraudulently obtained as aforesaid, were taken in execution and sold to satisfy the fictitious debts, and so by the means aforesaid, the defendants cheated and defrauded the said tradesmen (repeating their names) of the said goods, &c. It was held upon error (reversing the judgment of the court below) that the indictment was bad, because it contained a defective statement of the crime of conspiracy. The charge that the defendants conspired to cheat and defraud certain liege subjects, being tradesmen, was insufficient, because, if a conspiracy to cheat *certain* persons, those persons should be named, or if the intention of the conspirators was to cheat a class of persons, the particular individuals not then ascertained, but to be thereafter selected, the indictment ought to have alleged the object of the conspiracy accordingly. It was also held, that this defective statement was not cured by referring to the whole of the count, none of the overt acts being shown, by proper averments, to be indictable in themselves. And although the overt acts were averred to have been done in pursuance of the conspiracy before mentioned, it did not necessarily follow that because the goods were obtained in pursuance of a conspiracy to cheat *some persons*, the conspiracy was to cheat the persons from whom the goods were obtained; and moreover, that even if the averment was to be taken as equivalent to one that the goods were obtained from the named individuals, in pursuance of an illegal conspiracy to cheat and defraud those named individuals of their goods, it would still be defective, as not containing a direct and positive averment that the defendants did conspire to cheat and defraud those persons, which an indictment for a conspiracy, when a conspiracy itself is the crime, ought certainly to contain; and that the same objection applied to the other acts.

(d) In that case, in addition to the general count, the indictment contained special counts, charging the conspiracy to be falsely exhibiting an information against certain persons, for an infringement of a statute respecting post-horse duties, but those counts were held insufficient on other grounds.

and defraud them of their moneys," was too general. In *Reg. v. Gill*, 2 B. & Ald. 204, (e) a similar count to the present was held sufficient in arrest of judgment, but that did not affect the question as to the necessity of proof in support of it. With respect to the 7th count, there was an objection that the false pretence was not set out with the proper certainty. It departed from the usual form in alleging after the false pretence, that by reason of the said false pretence, the defendants obtained the bread. The usual form was, that by means of which false pretence, &c. By "reason of" is not same as by means of. But even that is not sufficient. It is objectionable as not containing any direct and positive averment by the jurors, but merely a sort of historical narrative that the goods were obtained.

Hodgson, for the prosecution, contended that the 3rd count was perfectly good.—In the case of *King v. The Queen*, already cited, the case of *Reg. v. Peck*, 9 A. & E. 686, was referred to. It was there held that it was no objection that the count on a similar charge to the present, did not name the parties who were to have been defrauded. (f) He also referred to the case of *Reg. v. Rowlands* (5 Cox's Crim. Cas. 437), where similar counts were employed.

(e) The indictment alleged, that the defendants unlawfully did conspire and combine together, by divers false pretences, and subtle means and devices, to obtain and acquire to themselves, of and from P. D. and G. D. divers large sums of money of the relative moneys of the said P. D. and G. D., and to cheat and defraud them respectively thereof, and it was held sufficient. Abbott, C. J., "The gist of the offence is the conspiracy; and although the nature of every offence must be laid with reasonable certainty, so as to apprise the defendant of the charge, yet I think that it is sufficiently done by the present indictment. It is objected that the particular means and devices are not stated. It is, however, possible to conceive that persons might meet together, and might determine and resolve that they would, by some trick and device, cheat and defraud another, without having at that time fixed and settled what the particular means and devices should be. Such a meeting and resolution would nevertheless constitute an offence. If, therefore, a case may be reasonably suggested in which the matters here charged would, if there was nothing more, be an offence against the law, it is impossible as it seems to me, to conclude that the law should require the particular means to be set forth. The offence of conspiracy may be complete, although the particular means are not settled and resolved on at the time of the conspiracy;" and, per Holroyd, J., "The present case differs materially from the case of obtaining money under false pretences. There the false pretences constitute the offence; but here the conspiracy is the offence; and it is quite sufficient to state only the act of conspiring and the object of the conspiracy in the indictment. Here it is stated that the parties did conspire, and that the object was to obtain, by false pretences, money from a particular person. Now a conspiracy to do that would be indictable, even when the parties had not settled the means to be employed." *Greaves*, Q. C. observes, that "in this case the statements were of the most general kind that have ever been held sufficient," and refers to *Reg. v. Parker*, 11 L. J. (N.S.) 102, M. C., where Williams, J. said "It has been always thought that in *Reg. v. Gill*, the extreme of laxity was allowed." (2 Russell on Crimes, by Greaves, p. 692, note (e).)

(f) The first count of the indictment in *Reg. v. Peck*, stated that the defendants, T. P., J. P., and S. P., falsely, unlawfully and wickedly did conspire, confederate and agree amongst themselves to deceive and defraud, and to cause and procure to be deceived and defrauded, divers of Her Majesty's liege subjects, who should bargain with the said T. P. and J. P. for the sale of goods and merchandize, of great quantities of such goods and merchandize of the said subjects, of great value, to wit, 2000*l.* without making payment or other remuneration or satisfaction for the same, with intent to obtain and acquire to the said T. P., J. P., and S. P., divers sums of money and other profit and emolument, to the evil example, &c. The 2nd count alleged, that the said T. P., J. P., and S. P., on &c. at &c. (they the said T. P. and J. P. having theretofore been, and then and there being, in partnership trade together, and being then and there indebted to divers persons in divers large sums of money, to wit, 10,000*l.*) falsely, unlawfully, and wickedly did conspire, combine, confederate and agree amongst themselves, to deceive and defraud the said creditors of them the said T. P. and J. P., of payment

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Huddleston, in reply said, in the case *Reg. v. Rowlands*, a rule had been granted since the trial, to arrest the judgment on the very counts referred to. (*g*)

Mr. BARON PLATT, after intimating an opinion that there was nothing in the objection to the 7th count, said he would put a further question to the jury with reference to the 4th count, which might save trouble. He then asked the jury, whether they thought the false pretences were made in pursuance of a previous conspiracy by all the defendants? The jury said "Yes, we are of that opinion."

Thereupon the defendants were sentenced on the 4th count, the husband and wife each to twelve months' imprisonment, with hard labour, and the daughter Jane to three months' imprisonment, with hard labour.

of their said debts; and the jurors, &c. present that the said T. P., J. P., and S. P., afterwards, to wit, on &c. at &c., in pursuance of and according to the said conspiracy, combination, confederacy, and agreement amongst themselves, had falsely, and unlawfully, and wickedly did make and execute, and cause and procure to be made and executed, a certain false and fraudulent deed of bargain and sale, and assignment of certain fixtures, stock in trade, and good-will of great value, of and belonging to the said T. P. and J. P., by and from the said T. P. and J. P. to the said S. P., for divers false and fraudulent considerations, with intent thereby to obtain and procure to the said T. P., J. P. and S. P., divers sums of money and other emolument, to the great damage of the said creditors, to the evil example, &c. On error from the Borough Court of Quarter Sessions, it was held, that both counts were bad for uncertainty; the first count for not defining with sufficient particularity what the defendants conspired to do, —obtaining goods without paying not being necessarily a fraud, and the words of the count might apply to the obtaining goods to sell on commission; and the 2nd count, for not stating in what respect the deed was false and fraudulent. It was held, however, that there was nothing in the objection to the 1st count, that it did not state what particular creditors the defendants meant to defraud, because, if the offence in fact went no further than the general conspiracy, it could not well be known what particular person would fall into the snare.

(*g*) See *ante*, vol. v., p. 467. A *nolle prosequi* was entered as to those counts, so that the question was not decided.—[J. E. D.]

OXFORD CIRCUIT.

MONMOUTHSHIRE SPRING ASSIZES, 1852.

Monmouth, March 26.

(Before Mr. BARON PLATT.)

REG. v. EVAN WILLIAMS. (a)

*Larceny—Security for money—Statute 7 & 8 Geo. 4, c. 29, s. 5.**A mortgage deed, and title deeds accompanying it, constitute a security for money within the 7 & 8 Geo. 4, c. 29, s. 5, which makes it felony to steal "any debenture, deed, bond, bill, note, warrant, order or other security whatsoever for money or for payment of money."**An indictment charging in one count the larceny of "three deeds being a security for money, to wit, for 20l., of and belonging to H. W.:" and in another count the larceny of "three deeds, being a security for the payment of money, to wit, for 20l., of and belonging to H. W."**Held, to be supported by proof of the larceny of deeds of lease and release from A. to B. of real estate, and of a mortgage by demise of the same property from B. to C., and held by the prosecutor as executor of C.*

IN the first count of the indictment, the prisoner, Evan Williams, was indicted for that he, on the 18th of December, 1851, three deeds, being a security for money, to wit, for 20l., of and belonging to Hannah Williams, then and there feloniously did steal, take and carry away, against the form of the statute in such case made and provided. In a second count they were described as "three deeds, being a security for the payment of money, to wit, for 20l., of and belonging to Hannah Williams." In a third count, the deeds were described as "three skins of parchment."

From the evidence on the part of the prosecution, it appeared that the prosecutrix, Mrs. Hannah Williams, was the executrix of John Waters, and, in that character, became possessed of the three deeds mentioned in the indictment. Two of them were a conveyance in fee by lease and release, from William Price to James Bailey, of certain freehold land and premises in the county of Monmouth. The third deed was a mortgage, by demise, of the same property, from James Bailey and his trustee, to John Walters for the term of five hundred years, for securing the sum of twenty pounds.

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

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The prisoner claimed some small interest in a part of the property included in the conveyance and mortgage; and, having gone to the prosecutor's house and obtained a sight of the deeds, watched his opportunity and, suddenly snatching up the deeds, ran away with them. It was for this act that he was now indicted. The money was still due on the mortgage.

At the close of the case for the prosecution,

W. H. Cooke, on the part of the prisoner, submitted that the indictment was not proved. The deeds formed part of the evidence of the title to real estate, and were not the subject of larceny at common law. The 7 & 8 Geo. 4, c. 29, s. 23, (b) made it a misdemeanor to steal any instrument being evidence of the title to any real estate. Here the taking was charged as a felony. The 5th section of the same statute, it is true, makes it felony to steal "any debenture, deed, bond, bill, note, warrant, order, or other security whatsoever, for money or for payment of money;" (c) but the deeds here did not constitute a security for money within that section. It was not a security to Hannah Williams, the prosecutrix, even if the demise could be considered as a security for money to Walters within the statute. It is not within the act unless on the face of it it is a security for money. As to the third count, that cannot be supported. The difficulty cannot be got rid of by describing the deeds as skins of parchment. If in these cases the objection could be avoided by describing the skins as bits of parchment, where was the necessity for statutable enactments respecting choses in action? A thing must be described by its true character, and what it really is.

Powell, for the prosecution, submitted that all the counts were sufficient. The words of the 5th section under which the prisoner is indicted, are very comprehensive:—"Any debenture, deed, &c., or other security whatsoever for money or for payment of money." Surely a mortgage is a security for money, if anything is.

(b) The section enacts that, "if any person shall steal any paper or parchment, written or printed, or partly written and partly printed, being evidence of the title, or of any part of the title, to any real estate, every such offender shall be deemed guilty of a misdemeanor, and, being convicted thereof, shall be liable to any of the punishments which the court may award, as hereinbefore last-mentioned; and in any indictment for such offence, it shall be sufficient to allege the thing stolen to be evidence of the title, or of part of the title, of the person, or of some one of the persons having a present interest, whether legal or equitable, in the real estate to which the same relates, and to mention such real estate, or some part thereof, and it shall not be necessary to allege the thing stolen to be of any value."

(c) "If any person shall steal any tally, order, or other security whatsoever, entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund, whether of this kingdom, or of Great Britain, or of Ireland, or of any foreign state, or in any fund of any body corporate, company, or society, or to any deposit in any savings bank, or shall steal any debenture, deed, bond, bill, note, warrant, order, or other security whatsoever, for money or for payment of money, whether of this kingdom, or of any foreign state, or shall steal any warrant or order for the delivery or transfer of any goods or valuable thing, every such offender shall be deemed guilty of felony, of the same nature and in the same degree, and punishable in the same manner, as if he had stolen any chattel of like value with the share, interest, or deposit to which the security so stolen may relate, or with the value of the goods or other valuable thing mentioned in the warrant or order; and each of the several documents hereinbefore enumerated, shall throughout this act be deemed for every purpose to be included under and denoted by the words 'valuable security.'"

PLATT, B.—Must it not, under this indictment, be a security to Hannah Williams, and all three deeds constituting a security?

Powell.—It is submitted that that is not necessary. It is sufficient if the instrument be a security for money in fact. In *Watts' case* (d) a cheque was described as a piece of paper.

PLATT, B., intimated his doubts whether the indictment was supported by the evidence, but said he would consult Mr. Justice Wightman, sitting in the other court; and withdrew for that purpose. On his return, he said:—"I have discussed the matter with my brother Wightman, and he has induced me to think that the words 'other security for money,' in the 5th section of the statute, are quite sufficient to include this case. On talking the matter over he has quite satisfied me on that point."

Cooke applied to his lordship to give the prisoner the opportunity of having the matter reconsidered by reserving the point.

PLATT, B.—No; I do not think I ought to do that. It is a course which ought not to be adopted lightly.

There being no doubt as to the *facts* of the case, Cooke did not address the jury, and the prisoner was convicted.

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(d) See 4 Cox's Crim. Cas. 336. In that case, however, no objection was taken on the ground that the cheque could not be described as a bit of paper. The question was, whether the facts constituted larceny.—[J. E. D.]

OXFORD CIRCUIT.

MONMOUTHSHIRE SPRING ASSIZES, 1852.

Monmouth, March 26.

(Before Mr. JUSTICE WIGHTMAN.)

REG. v. DILMORE. (a)

Admissibility of depositions of deceased persons—Statute 11 & 12 Vict. c. 42, s. 17—Identity of offence charged in the indictment with that preferred before the justices.

Under the statute 11 & 12 Vict. c. 42, s. 17, which, after providing for the taking of depositions before justices, enacts that, upon proof at the trial of the death, &c., of the deponent, "it shall be lawful to read such depositions as evidence in such prosecution;"

Quære, whether the deposition of a deceased person on a charge against the prisoner of stabbing him, can be read on a trial for the murder or manslaughter of the deceased.

THE prisoner was indicted for manslaughter.

The indictment charged that the prisoner, on the 4th day of August, 1851, "did feloniously kill and slay" one Joanni Stoicovich.

On the part of the prosecution it was sought to give in evidence the deposition of the deceased, taken on the 14th of August, 1851, the wound having been inflicted on the 4th August, and the deceased having lived until the 16th of that month.

The deposition was headed as follows:—

"Borough of Newport, } The examination of Joanni Stoicovich,
in the county of } late seaman on board the *Elodie*, of
Monmouth, to wit. } Trieste, lately lying in the Newport-
dock, taken upon oath this fourteenth day of August, A.D. 1851, at
Pillgwently, in the said borough, before me, Thomas Hughes,
Esq. one of Her Majesty's justices of the peace in and for the said
borough, in the presence and hearing of Cesare Dilmore, charged
before me the said justice, for that he the said Cesare Dilmore did
on the 4th day of August instant, at the said borough, feloniously
stab, cut and wound the said Joanni Stoicovich in the belly with
a knife, or some other cutting instrument, of which stabbing, cut-
ting and wounding the said Joanni Stoicovich is likely to die."

Huddleston, for the prisoner, submitted that the deposition could

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

not be read. It was proposed to read it under the provisions of the statute 11 & 12 Vict. c. 42, s. 17. That section enacts "That in all cases where any person shall appear or be brought before any justice or justices of the peace, charged with any indictable offence," &c. the justices shall take the examinations of the witnesses in the manner therein stated; and then proceeds to enact that, "if, upon the trial of the person so accused as first aforesaid, it shall be proved by the oath or affirmation of any credible witness, that any person whose deposition shall have been taken as aforesaid is dead," &c. "it shall be lawful to read such deposition as evidence in such prosecution." In this case, the charge before the magistrates was one of stabbing, and not a charge of manslaughter. He submitted that the deposition can only be given in evidence where the charge before the magistrate is the same as that for which the prisoner is subsequently indicted. The statute says, "upon the trial of the person so accused as first aforesaid," referring to the accusation before the magistrate. [WIGHTMAN, J.—If that is so, the deposition of a deceased person cannot be used in any case where the charge is connected with his death.](b) The question had been raised in a case before Mr. Greaves, Q.C. sitting at Gloucester, to try prisoners, and after conferring with Lord Campbell and Mr. Justice Williams, it was held that a deposition on a charge of assault was not admissible on an indictment for cutting with intent to do grievous bodily harm, but that the indictment must be for the same offence as that charged before the justices: (*Reg. v. Ledbetter and others*, Gloucester Summer Assizes, 1850.)(c)

Barrett, on the same side, urged that it was a hardship on the prisoner to receive the deposition of the deceased in this case. It would not be admissible on an indictment for stabbing, unless the prisoner was present at the time, so as to cross-examine the witness; and the deposition, when complete, consisted of the cross-examination as well as of the examination-in-chief. Here there could have been no cross-examination as to the charge with which the prisoner now stood indicted. [WIGHTMAN, J.—The hardship you put scarcely arises in this case. The charge is varied by the death, but the charge is still manslaughter by cutting and wounding.] The statute which enables depositions to be read in the absence of the witness ought to be construed strictly. Supposing a prisoner to be indicted for highway robbery and wounding, would a deposition of an absent or deceased witness taken on a charge before the magistrates of wounding only, be admissible? Surely not.

Skinner, for the prosecution.—The question has been already decided. The case of *R. v. Smith*, R. & R. 339 (cited in Archbold, p. 149, 11th edition), is expressly in point. There it was held that depositions taken on a charge of assault were, after the death of the deponent, admissible against the defendant on his trial for the murder of the deponent, who died in consequence of the

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(b) See Mr. Starkie's note to *Smith's case*, 2 Stark. Rep. 212.—[J. E. D.]

(c) The case was cited from a M.S. note of Mr. Greaves, Q.C.—[J. E. D.]

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assault. That was a decision subsequent to the statute 7 Geo. 4, c. 64, which merely provided for the taking of depositions, and contained no provision respecting the admissibility of depositions in the event of the death of the deponent. The recent statute simplified the powers under the former statute, and was not intended to diminish but to extend their operation. The 11 & 12 Vict. c. 42, in using the terms, "in such prosecution," must be taken to mean the prosecuting the inquiry to an end, whatever particular form it might assume from intervening circumstances. The charge before the magistrates was for stabbing, cutting and wounding Joanni Stoicovich, "of which stabbing, cutting and wounding the said Joanni Stoicovich is likely to die." That was the charge here, subject to the change in the particular offence arising from the death of the deponent.

[WIGHTMAN, J.—What is the offence charged on the face of the depositions? It seems to be stabbing, simpliciter. Is that an offence, except as including an assault, it not being alleged that the stabbing was done unlawfully or maliciously?]

Huddleston in reply.—The case of *R. v. Smith* was not on the present statute. Moreover, the case before Mr. Greaves, at Gloucester, with the opinion of Lord Campbell, showed that *Smith's case* was not law. It was an unsatisfactory decision. Several of the judges expressly stated that they should have doubted the admissibility of the evidence in that case, but for *Radbourne's case*, 1 Leach, 457 (see 2 Russell on Crimes, by Greaves, 894, note f.)

WIGHTMAN, J.—There is no decision precisely in point. The case cited at Gloucester differs in one respect from this. There the original charge was an assault, here there is something more. The recent alteration in the law, making it unnecessary to set out the means of death in the indictment, increases the difficulty, for here the indictment merely alleges that the prisoner did feloniously kill and slay the deceased. The question raised here is one of the greatest importance, for it is in those cases where an injury has been done to the deponent of which he subsequently dies that it is desirable to have his evidence. If it is a *casus omissus* the statute ought to be amended forthwith. It may be that the Legislature has omitted to provide for the very cases where the necessity chiefly arises, but if so it is a most extraordinary defect. I shall receive the evidence and reserve the point if necessary.

The deposition was then read.

The prisoner was ultimately acquitted.

WIGHTMAN, J. observed, that although it no longer became necessary in this case to discuss the point raised with reference to the admissibility of the deposition, it was very important that the question should be settled without delay.

OXFORD CIRCUIT.

GLOUCESTERSHIRE SPRING ASSIZES, 1852.

Gloucester, March 29.

(Before Mr. BARON PLATT.)

REG. v. DAY. (a)

Evidence—Depositions—Admissibility of depositions in the absence of the witness, under the statute 11 & 12 Vict. c. 42, s. 17.

Before a deposition of a person who is dead, or so ill as not to be able to travel, can be read on the trial, under the statute 11 & 12 Vict. c. 42, s. 17, it must be proved affirmatively on the part of the prosecution that the deposition was taken in the presence of the accused person, and that he or his counsel or attorney had a full opportunity of cross-examining the witness.

To give the accused a full opportunity within the meaning of the statute, the examination must be taken, question by question, in his presence, and in the presence of the magistrate, and it is not sufficient to read over the statement of the witness, previously taken and committed to writing, in the absence of the magistrate.

The accused must also be asked whether he has any question to put with reference to the statement of the individual witness.

To render the deposition of an absent person admissible, it is not necessary that he should be absolutely unable to travel; it is sufficient if his attendance would place his life in jeopardy.

THE prisoner was indicted for larceny as a servant. Her mistress, Keturah Cornbill, the prosecutrix, was alleged to be unable to attend in consequence of illness, and, in order to allow of her deposition, taken before the committing magistrate, being read as evidence on the trial under the provisions of the statute 11 & 12 Vict. c. 42, s. 17, a medical witness was called, who stated that he visited the prosecutrix the previous afternoon at her house, a distance of several miles from Gloucester, and found her suffering from bronchitis. She was sitting up in a chair, supported by pillows. The witness examined her, and remained about half-an-hour, and he was of opinion that her life would be endangered if she was brought into court. On cross-examination, he stated that he was not her ordinary medical attendant, but visited

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law

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her for the purpose of ascertaining whether she was in a fit state to attend and give her evidence.

A relative, a great-nephew of the prosecutrix, corroborated this evidence. He said his aunt was about sixty years of age, and had been an invalid for some years. She was confined to her bed the day before the visit of the medical witness, but was rather better the next day. She was wrapped in flannel, but he did not hear her cough. Her usual medical attendant had seen her on the day she was confined to her bed, but he was unable to attend at Gloucester to give evidence, being in daily attendance on Lord Dynevor. The witness thought his relative was quite unable to attend as a witness.

W. H. Cooke, for the prisoner, submitted that the evidence was insufficient. The statute 11 & 12 Vict. c. 42, s. 17, required the proof to be that the witness is "so ill as not to be able to travel." The evidence amounted to nothing more than that it would be imprudent for the prosecutrix to attend, or at most that she was *unfit* to travel, and not such a total inability as the statute required. This was a new provision, and ought to be applied with great care and strictness.

PLATT, B.—It is sworn that the attendance of the witness would endanger her life. Each case must of course be governed by its own circumstances. Here enough has been shown to render the deposition admissible.

Huddleston then applied to have it read by the officer of the court, but—

PLATT, B.—Something further is necessary. You must show that the deposition was taken conformably with the statute.

The magistrate's clerk was called. He stated that the prisoner was present with her father when the deposition of the prosecutrix was taken. The magistrate asked the prisoner whether she had any questions to put; but there was a little uncertainty in the evidence of this witness whether she was so asked with reference to the particular examination of the prosecutrix, or whether it was a general question at the end of the examination of another witness.

A police officer was then examined. He was a witness on the same occasion. He could not recollect whether the prisoner was asked if she had any questions to put to the prosecutrix; but he disclosed the fact that the examinations of the witnesses were taken and committed to writing by the clerk previously to the arrival of the magistrate, that they were then read over in the presence and hearing of all parties, and that it was then, if at all, that the prisoner was asked if she had any questions to put to the prosecutrix.

PLATT, B., expressed his opinion that the deposition was inadmissible.

Huddleston submitted that the statute had been sufficiently complied with, if the deposition appeared on the face of it to be regularly taken. The statute provides that "If such deposition purport to be signed by the justice by or before whom the same purports to have been taken, it shall be lawful to read such deposition as

evidence in such prosecution, without further proof thereof, unless it shall be proved that such deposition was not in fact signed by the justice purporting to sign the same." The court would presume that the deposition was regularly taken, and that the magistrate did his duty properly. The onus of showing that she had not an opportunity lay on the prisoner, and there was nothing in the facts proved inconsistent with her having that full opportunity.

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PLATT, B.—How could it suggest itself to the prisoner that she had a right to put questions? It was the duty of the magistrate to ask her, and it must be proved that he did so, and did so with reference to the examination of the particular witness. The words of the statute are—"If upon the trial of the person so accused as first aforesaid it shall be proved, by the oath or affirmation of any credible witness, that any person whose deposition shall have been taken as aforesaid is dead, or so ill as not to be able to travel, and if also it be proved that such deposition was taken in the presence of the person so accused, and that he or his counsel or attorney had a full opportunity of cross-examining the witness, then if such deposition purport to be signed by the justice by or before whom the same purports to have been taken, it shall be lawful to read such deposition," &c. Until the question was asked her, I am of opinion she had no opportunity of cross-examination within the meaning of the statute, and the evidence is not satisfactory on that point. But on another ground the prisoner had not a full opportunity of cross-examination. The examination of the witness being taken and put into writing before the arrival of the magistrate, the reading it over in his presence could not give the prisoner a proper opportunity of cross-examination. She had a right to hear the evidence given step by step, and so to have time to consider what questions to put. I cannot allow the deposition to be read.

There not being sufficient evidence without the deposition of the prosecutrix, the prisoner was acquitted.

OXFORD CIRCUIT.

GLOUCESTERSHIRE SPRING ASSIZES, 1852.

Gloucester, April 2.

(Before Mr. JUSTICE WIGHTMAN.)

REG. v. JOHN TAYLOR. (a)

Perjury—Evidence—Comparison of handwriting by the jury.

The defendant was indicted for perjury alleged to have been committed by him on the trial of an action in the County Court, by swearing that the signature to a document was not in his handwriting. The judge of the County Court made the defendant write his name in court, and impounded the genuine, as well as the alleged forged signature. Semble, that on the trial for perjury, the jury might look at and compare the two signatures.

THE defendant, John Taylor, was indicted for perjury committed on the trial of an action in the County Court of Gloucestershire, held at Cheltenham, before J. Francillon, Esq., in which Daniel Crowther was the plaintiff and the said John Taylor was the defendant. The indictment alleged that, on the trial of the said cause, it then became and was a material question whether the said John Taylor had signed a certain written paper or memorandum, whereby the said John Taylor agreed to make payment to the said Daniel Crowther of certain money and instalments thereof, then being in issue in the said suit; and that the said John Taylor, upon the trial and hearing of the said cause being duly sworn, &c., did depose and swear that the signature attached to and then being at the foot of the said written paper or memorandum was not the signature of him the said John Taylor, and that he had not written the same, whereas in truth and in fact the said signature was the signature of him the said John Taylor, and was written by him.

It appeared from the evidence now adduced that Daniel Crowther, the plaintiff in the action, claimed a sum of money, the price of bricks alleged to have been sold by him to the defendant. Amongst other evidence adduced at the trial on the part of the plaintiff, the plaintiff's attorney swore that, having received instructions to apply to the defendant, he had several interviews

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

with him, and that on one occasion he saw him at a house the defendant was building, when the defendant signed a memorandum written in pencil by the attorney, being an agreement to pay the debt by instalments therein mentioned. The defendant was sworn and examined, and stated that he never signed the memorandum, and that it was a forgery. He also denied that he was indebted to the plaintiff. The learned judge of the County Court directed the defendant to write his name in pencil, which he did on a piece of paper. The judge compared it with the signature to the alleged forgery, and eventually the disputed document, together with the signature in court, were impounded, and the case was adjourned, in order that the plaintiff's son might be examined, the defendant alleging that the bricks in question were purchased from the son and not from the father. The son, however, had been out of the country, and his testimony could not be procured, and eventually the plaintiff was nonsuited. The present indictment for perjury was thereupon preferred against the defendant. The above facts having been proved, and some slight evidence as to handwriting having been given in addition to that of the attorney,

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Davis, for the prosecution, proposed to submit for examination to the jury, as well the signature written by the defendant at the trial of the action, as the memorandum and signature the subject-matter of the indictment, and to allow the jury to compare one with the other. He referred to *Williams's case*, 1 Lewin, 137, cited in 2 Russell on Crimes, by Greaves, p. 395. The prisoner was there indicted for forging a deed. When the case was closed, Bayley, J., called the person whose name was alleged to have been forged by the prisoner, and desired him to write his name on a sheet of paper, which he did, and Bayley, J., then handed it to the jury, together with the imputed forgery. Mr. Greaves remarks upon that case: "this seems to have been a dangerous experiment, and giving far too much facility to the prosecutor to write his name in such a manner as to suit the occasion." In the present case there was no such objection, the defendant being the person who was required to write his name.

Huddleston, for the defendant, said he should not raise any objection.

WIGHTMAN, J.—I am inclined to think the jury may look at and compare the two signatures. The signing of his name by the defendant during his examination on oath forms in fact part of the transaction out of which the charge arises. At all events, as it is not objected to, the jury may look at it.

It was accordingly handed to the jury, with the memorandum, after the summing up of the learned judge.

The defendant was acquitted.

OXFORD CIRCUIT.

GLOUCESTERSHIRE SPRING ASSIZES, 1852.

Gloucester, April 2.

(Before Mr. GREAVES, Q. C.)

REG. v. RUSSELL. (a)

Evidence—Admissibility of depositions taken abroad—Merchant Seaman's Act, 7 & 8 Vict. c. 112; Mercantile Marine Act, 13 & 14 Vict. c. 93; and the Documentary Evidence Act, 8 & 9 Vict. c. 93.

Semble, depositions taken by a consul abroad under the 7 & 8 Vict. c. 112, ss. 58, 59, and returned to this country, and certified under the consular seal to have been duly taken, are admissible in evidence under the Mercantile Marine Act, 1850 (13 & 14 Vict. c. 93, s. 115) without further proof, although it appears from extrinsic evidence that the witnesses gave their evidence in a foreign language, which was translated into English to the prisoner, and inserted in the depositions by the consul.

Quære, as to the effect of 8 & 9 Vict. c. 113, s. 1 (to facilitate the admission in evidence of certain official and other documents), on such a case.

Quære, whether such depositions are admissible where the consul, after the examination of each witness, asked the prisoner whether he had anything to say, and on the prisoner saying he knew nothing about the witnesses, proceeded to examine the next witness, without expressly telling the prisoner that he might put questions to the witness.

Quære, whether depositions of witnesses containing a great portion of hearsay evidence are admissible.

Quære, has the judge power to strike out the portion that consists of such hearsay evidence, and admit the residue.

THE prisoner was indicted for the larceny of a velvet bag, a bunch of keys, some pieces of the current coin of Turkey, and four bills of exchange called *Caimes*, for the payment respectively of 1,000, 250, 70, and 20 piastres, the property of Joseph Brown. The felony was alleged to have been committed on the 4th of February, 1852, on board a merchant vessel called the *Bolton*, then lying in the Bosphorus, of which vessel the prisoner was mate, and the prosecutor captain.

The principal evidence against the prisoner proposed to be adduced on the part of the prosecution, consisted in the depositions of witnesses still abroad. It appeared that the witnesses were examined in the Greek language; that no interpreter was sworn, but that the consul acted as interpreter, both by translating the evidence to the prisoner, and also by returning the depositions in

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

English to this country. From the Board of Trade they were transmitted to Mr. Wilkes, the attorney for the prosecution, resident in Gloucester, and were now produced by him at the trial. The depositions bore the official seal of the English consul for Constantinople, and were certified to have been taken in the presence of the prisoner.

Cripps, for the prisoner, objected to the depositions being received in evidence. The consul should have employed a sworn interpreter, or returned the depositions in the original language. There was nothing to show that the translation was a correct one. The consul might not be as conversant with the modern Greek language as he imagined, and it was possible therefore that he might have transmitted a very erroneous translation.

Macnamara, for the prosecution, submitted that the statutes bearing upon this subject made the depositions evidence in their present shape without further proof. By the Merchant Seaman's Act, 7 & 8 Vict. c. 112, (b) the depositions taken before a consul

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(b) Section 58 enacts "that all offences against the property or person of any subject of Her Majesty, or of any foreigner, which shall be committed in or at any port or place either ashore or afloat, out of the dominions of Her Majesty, by the master and crew (including apprentices) or any or either of them, belonging to any ship subject to any of the provisions of this act, or who within three months before the committal of the offence shall have been the master thereof, or shall have formed part of any such crew, shall be, and they are hereby declared to be offences of the same nature respectively, and to be liable to the same punishments respectively, as if they had been committed on the high seas and other places within the jurisdiction of the Admiralty of England, and shall be inquired of, heard, tried, and determined, and adjudged in the same manner as if such offences had been committed within such jurisdiction; and where any trial for such offences, or for any misdemeanor against the provisions of this act, shall take place before any justices or judges of oyer and terminer and gaol delivery, it shall be lawful for the court to order and direct the payment of the costs and expenses of the prosecution, as in the case of costs and expenses of prosecutions for offences committed within the jurisdiction of the Admiralty of England."

Section 59 enacts "that whenever any complaint shall be made to any of Her Majesty's consuls or vice-consuls of any such offence or of any offence having been committed at sea by the master and crew (including apprentices), or any or either of them, belonging to any ship subject to any of the provisions of this act, it shall be lawful for any such consul or vice-consul to inquire into the case, upon oath, and at his discretion to cause any offender to be placed under all necessary restraint, so far as it may be in his power, so that he may be sent and conveyed in safe custody to England as soon as possible, in any vessel of Her Majesty, or of any of her subjects, to be there proceeded against according to law; and the costs and charges of imprisoning any such offender, and of conveying him and the witnesses to England, if not conveyed in the ships to which they respectively belong, shall be considered and deemed as part of the costs of the prosecution, or be paid as costs incurred on account of seafaring subjects of the United Kingdom left in distress in foreign ports; and all depositions taken before any consul or vice-consul abroad, and certified under his official seal to be the depositions, and that they were taken in the presence of the party accused, shall be admitted in evidence in all courts having criminal jurisdiction, and otherwise, in like manner as depositions taken before any justice of the peace in England now are or may be; and the register ticket of every offender shall be delivered up to Her Majesty's consul or vice-consul as the case may be, and be transmitted by him to the registrar of seamen."

The Mercantile Marine Act, 1850 (13 & 14 Vict. c. 93, s. 116), enacts "that whenever in any legal proceeding in England in respect of any matter in which British "Consular Officers" have the power of taking depositions, it is proved that a witness who has been examined before any "Consular Officer" abroad, is out of the United Kingdom, or cannot be found or produced on the trial or hearing, the deposition of such witness taken before such "Consular Officer" in the matter, and if the proceeding is criminal, in the presence of the party accused, and certified by such "Consular Officer" under his official seal to have been so taken, shall be admitted in evidence in such proceeding; and any deposition purporting to be so certified shall be deemed to have been so taken and certified as aforesaid, unless the contrary is proved."

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abroad, and certified under his official seal to be the depositions, and that they were taken in the presence of the party accused, are admissible in evidence, in the same manner as depositions taken before justices of the peace in England; and by the Mercantile Marine Act, 1850 (13 & 14 Vict. c. 92), it is enacted (s. 115) that whenever it is proved in any legal proceeding in England, in respect of any matter in which consular officers have the power of taking depositions, that witnesses whose depositions have been so taken are abroad, the certified depositions taken in the presence of the accused party shall be admitted in evidence, and any deposition purporting to be so certified, shall be deemed to have been so taken and certified as aforesaid, unless the contrary is proved. The deposition so certified is the deposition as it stands on the face of the document, and the language and words employed, whatever they may be, constitute the deposition. Independently of these provisions, the statute 8 & 9 Vict. c. 113 (to facilitate the admission in evidence of certain official and other documents), enacts (c) that whenever by any act any certificate, official or public document, or any certified copy of any document, shall be receivable in evidence, the same shall be admitted in evidence, provided they purport to be sealed or impressed with a stamp as required by the act, without any proof of the seal or stamp, and without any further proof thereof.

Cripps, in reply.—The deposition to which the statute 13 & 14 Vict. c. 93 applies, is the deposition of the witness. That cannot be said to be his deposition which is not the language he made use of. Besides, the deposition is only receivable unless the contrary is proved. Here it clearly did appear that there was an objection, and that the deposition was not duly taken. He should contend, that a deposition taken in England would not be admissible, without proof that it was properly translated, and it would be absurd to say that if it was insufficient if taken in England, it would nevertheless do if taken abroad. Besides, under the Merchant Seaman's Act cited, the depositions are only admissible in evidence in the same manner as depositions taken before justices in England.

GREAVES, Q. C. (sitting as judge and assisting in the disposal of criminal cases,) said he would consult Mr. Justice Wightman

(c) "Wherever by any act now in force or hereafter to be in force, any certificate, official or public document, or document or proceeding of any corporation or joint-stock or other company, or any certified copy of any document, bye-law, entry in any register or other book, or of any other proceeding, shall be receivable in evidence of any particular in any court of justice or before any legal tribunal, or either house of Parliament, or any committee of either house, or in any judicial proceeding, the same shall respectively be admitted in evidence, provided they respectively purport to be sealed or impressed with a stamp, or sealed and signed, or signed alone, as required, or impressed with a stamp and signed, as directed, acts made or to be hereafter made, without any proof of the seal or stamp, where a seal or stamp is necessary, or of the signature or of the official character of the person appearing to have signed the same, and without any further proof thereof in every case in which the original record could have been received in evidence." Mr. Phillips observes that it seems impossible to give any meaning to these last words: they appear to have been inserted through inadvertency. Evid. vol. 2, p. 241, note (1) 10th edit.; see also Taylor on Evid. vol. 1, p. 10.—[J. E. D.]

sitting at Nisi Prius, and he retired for that purpose. On his return, he said, that Mr. Justice Wightman agreed with him in opinion that the depositions ought to be received, but that the point was so far from clear, that if necessary, it should be reserved for the Court of Criminal Appeal.

It then appeared from *vivâ voce* testimony adduced, that the only question put to the prisoner by the consul after he had translated to him the examination of the witness, was, "Have you anything to say?" to which the prisoner answered, "I know nothing about them (the witnesses.)"

Cripps further objected to the admissibility of the depositions, as it did not appear that the prisoner had an opportunity of cross-examining the witnesses, as he was not told according to the practice in this country, as each witness concluded his evidence, that he might put such questions to him as he thought proper.

GREAVES, Q. C. said, the objection had great weight with him, but he should receive the depositions, and would reserve this point also, if necessary.

The depositions were then read. They were found to contain a great deal of hearsay evidence, upon which

Cripps objected that on this ground they were inadmissible, as it was impossible to separate the effect of the good and bad evidence upon the minds of the jury.

The learned judge presiding, suggested that the difficulty might be avoided by running his pen through all the hearsay portions of the depositions, and thus leaving the officer of the court to read only the unobjectionable portions, (*d*) but

Cripps contended that the learned judge had no authority to do this. The statute only allowed *the depositions*, that is to say, the whole of them, to be read, and did not authorize a judge to make any selection of what he might consider fit or unfit to submit to the consideration of a jury, and that if any part was to be read, all must be read.

GREAVES, Q. C. thereupon suggested to the counsel for the prosecution the danger of admitting such evidence in criminal cases, the consul having returned all kinds of improper testimony, and not having given the prisoner the opportunity of cross-examining the witnesses produced against him.

Macnamara admitted the danger and hardship of such a course of proceeding, and under the circumstances would not further press the case against the prisoner, but, with the learned judge's permission, would consent to a verdict of not guilty being recorded, provided it was distinctly understood that it was upon the ground that the depositions were improperly taken.

Verdict, not guilty.

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(*d*) This is the practice in civil actions with regard to depositions taken on interrogatories under a commission (*Hutchinson v. Bernard*, 2 M. & Rob. 1; see also *Stenkeller v. Newton*, 9 C. & P. 313), but upon a second trial of that cause the whole deposition was read, apparently on the ground that the objection did not clearly appear, and that the deposition must be presumed to have been rightly taken by the commissioners: (see 2 M. & Rob. 373.)—[J. E. D.]

OXFORD CIRCUIT.

BERKSHIRE SUMMER ASSIZES, 1852.

Abingdon, July 14.

(Before Mr. JUSTICE WILLIAMS.)

REG. v. M'GAVARAN. (a)

Indecent assault — Schoolmaster and pupil — Evidence — Costs of prosecution — Statute 14 & 15 Vict. c. 55, s. 3.

A schoolmaster who places his hands indecently on the person of a female pupil, is guilty of an indecent assault, although the pupil is thirteen years of age, and does not make any actual resistance.

Letters relating to the charge written by one of the scholars who is examined as a witness for the prosecution, may, on her denial of the handwriting, be proved and given in evidence on the part of the defendant for the purpose of affecting the witness's credit, and showing the capacity of the scholars to conspire to make a false charge against him, although the prosecutrix is not proved to have received the letters, or had any knowledge of their contents.

To enable the Court to order the costs of such a prosecution to be allowed, it is necessary, under the statute 14 & 15 Vict. c. 55, s. 3, to show that the case was originally brought before the justices for summary decision.

The production of the original summons to the defendant, setting out the complaint, and requiring him to appear before the justices to "answer the said information and complaint, and to be further dealt with according to law," is sufficient evidence of the fact required, to enable the court to order payment of the costs of the prosecution.

THE defendant, Hugh M'Gavaran, was indicted for an assault. The indictment contained three counts.

The 1st count was for a common assault on Mary Ponten, on the 6th of May.

The 2nd count was for an assault on Mary Ponten on the 13th of May.

The 3rd count alleged that the defendant, on the day and year last aforesaid, did unlawfully and indecently make an assault in and upon one Mary Ponten, and did then unlawfully, indecently, and against the will of her the said Mary Ponten, put and place the hands of him the said Hugh M'Gavaran upon and against the

(a) Reported by J. E. DAVIE, Esq., Barrister-at-Law.

private parts of her the said Mary Ponten, and then did other wrongs, &c.

Carrington, for the prosecution.

J. J. Williams, for the defendant.

Carrington, in stating the case for the prosecution, said that the defendant was a schoolmaster, and was charged with indecently assaulting one of his female scholars, and of the two assaults charged in the present indictment, one was committed in the parish church of Chieveley, during Divine service, and the other in the schoolroom. The prosecutrix was about thirteen years of age; and he submitted, on the authority of the case of *Reg. v. Nicholl* (R. & R. Crown Cases, p. 130, (b) that, although the prosecutrix did not offer any actual resistance, yet if she did not expressly consent, it must be taken to be against her will, the defendant having authority and control over her as schoolmaster.

Mary Ponten, the prosecutrix, stated that she was thirteen years of age on the 23rd of June last. Her father and mother were dead. At the age of ten she went to school at North East, in the parish of Chieveley. The defendant was the schoolmaster, and his wife schoolmistress. The scholars went to Chieveley church every Sunday, and sat in the chancel; the girls on one side and the boys on the others. The defendant sat with the boys and his wife with the girls. On a Sunday in May last, the girls' seats being full, the defendant took the prosecutrix on his seat, which was placed in an angle of the chancel, and screened by a high pew from the observation of the congregation in the body of the church. The boys and girls, during the prayers, knelt towards the communion table, so that they had their backs turned to the master. During one of the prayers the defendant, according to the prosecutrix's account, placed his hand indecently on her person. He subsequently, on another day, repeated his offence in the schoolroom, when she went to his desk to have a sum in arithmetic corrected. The following night the prosecutrix complained to her half-sister of the defendant's treatment, and on the next day to her grandfather, and she discontinued her attendance at the school. On cross-examination, a letter was put into the witness's hands, and in answer to questions, she said "I believe this is Emma

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(b) In that case the prisoner was indicted for an assault upon Ann Elliott, with intent to commit a rape, and in the second count for a common assault. The prisoner was the husband of a schoolmistress, and in his wife's absence heard the girls say their lessons. When the prosecutrix, who was thirteen years of age was standing before the defendant reading, he put his hand up her petticoats and also placed his hand on her private parts, and she continued reading in that position for half-an-hour without making any resistance. These acts were repeated on several occasions. She swore at the trial that she knew it was wrong in her to permit him, and wrong in both, and that it was against her will at all times. The learned judge (Mr. Baron Graham) in summing up remarked on the tender years of the girl; her situation under the care and authority of the prisoner and his wife; and the authority and influence which the prisoner had over her in the absence of his wife. His authority and influence were likely to put her off her guard and check her resistance. And he directed the jury if they thought the acts were against her will though she had not resisted to the utmost, they might find him guilty, but if they thought that those acts were not against her will, they might acquit him. The jury convicted the prisoner on both counts, and all the judges held the evidence was sufficient to support the count for a common assault.

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Preston's writing. I know Emma Preston, she is one of the scholars. I talked to her and to Eliza Dance about this matter, but I never saw this letter before."

Ann Povey, another child in the school, confirmed the evidence of the prosecutrix. In answer to questions put to her on cross-examination, she said, "Emma Preston never wrote to me that I know of. We talked to each other about this. I will not say I never received a note like this (letter put into witness's hands.) I did not say to Emma Preston 'now we have begun we must stick to it.'"

On re-examination the witness said, we used to talk to each other about what the master had done.

Emma Preston, a scholar, twelve years old, stated that Mary Ponten made a complaint to her about a week before she left school. On cross-examination, two letters were put in her hand, which she denied were in her handwriting. Other evidence was adduced in confirmation of the statement of the prosecutrix.

On the part of the defendant, it was endeavoured to be established that the charge was the result of a conspiracy among the children and their parents.

Williams, in addressing the jury said, he should call witnesses to prove that the letters he had put in the hands of the witnesses for the prosecution, were in the handwriting of Emma Preston, and he was about to read the letters to the jury, when

Carrington interposed, and objected to their being read or given in evidence. Letters written by the prosecutrix would be evidence, but these are letters said to have been written by Mary Preston.

WILLIAMS, J.—The letters are only evidence for the purpose of detracting from the credit of the witness. I take it for granted that Mr. Williams considers that these letters may affect the credit of the witness Emma Preston, I cannot reject their being used for that purpose. It is impossible to reject them.

The letters were then read to the jury, and among other witnesses called to contradict circumstances deposed to on the part of the prosecution, evidence was adduced to prove that the letters were in the handwriting of Emma Preston, but there was no evidence to prove that they were delivered to the parties to whom they were addressed. The letters were then put in and read as follows:—

No. 1.

"Dear Mary.—I want to see you, but I could not come, but Be shure you stick to what you have said abought Magaravalin, for tis no use to make a Lie withot whe stick to it. When you have read this burn it. I did stick to what we said here." The letter was indorsed "Give this to Mary Ponten."

No. 2.

"Eliza, stick to wot you have said, for its no use to make a lie without you stick to it, for I wants to do M'Garavin, you know

that, read this and burn it. I wants to see you when you come to my father's. Mind all of one mind and have one purse." (Indorsed) "Give this to Eliza Dance."

Carrington, in reply, contended that the letters were forgeries, and commented on the fact that the defendant had not called Eliza Dance to prove that the second letter was not received by her.

WILLIAMS, J., in summing up, said, "No one can doubt that the offence, if done at all, was against the will of the prosecutrix, considering her tender age, and, therefore, if you believe the evidence, the case is made out in law." With regard to the letters, the learned judge said, "although in strict rule of law the letters do not affect the credit of the prosecutrix, but of the witness Preston, it would be nevertheless absurd to say that in point of fact the question of the authenticity of these letters is not all important to this case; for if they were written by Preston it proves the capacity of these young children to form a deep design and conspiracy to injure the defendant. If established, it is impossible to say that the whole case is not affected by them." He observed, with reference to the observations of the counsel for the prosecution, that it was not to be expected that the defendant would call Eliza Dance, for it is not sought to be concealed that this is only one of a series of charges, and that she is a witness hostile to him.

The prisoner was convicted and sentenced to two years' imprisonment, with hard labour.

Carrington applied for the costs of the prosecution to be allowed, under the provisions of the statute 14 & 15 Vict. c. 55.

WILLIAMS, J., after referring to the statute, (c) said there was a difficulty in this case, that although the section recites the statute of George the Fourth, which is applicable to all charges of assault, the power conferred on courts of assize and sessions to order payment of the costs of the prosecution, is confined to cases of assault brought before the justices for *summary decision*. If not brought before the justices in the first instance for *summary decision*, I have no power to award costs; and therefore I must be

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(c) The 14 & 15 Vict. c. 55, s. 3, is as follows:—"And whereas by an act of the ninth year of King George the Fourth, chapter thirty-one, it is enacted that where any person shall unlawfully assault or beat any other person, it shall be lawful for two justices of the peace, upon complaint of the party aggrieved, to hear and determine such offence; and it is by the said act provided, that in case the justices shall find the assault or battery complained of to have been accompanied by any attempt to commit felony, or shall be of opinion that the same is from any other circumstance a fit subject for a prosecution by indictment, they shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as they would have done before the passing of the said act: and whereas it is expedient that courts before whom such indictments shall be tried shall have power to order payment of costs to parties so bound by recognizance to prosecute or give evidence: be it enacted, that in every case of assault so brought before such justices for summary decision in which the justices shall be of opinion that the same is a fit subject for prosecution by indictment, and shall thereupon bind the complainant and witnesses in recognizance to prosecute and give evidence at the assizes or sessions of the peace, every such court is hereby authorized and empowered at its discretion to order payment of the costs and expenses of the prosecutor and witnesses so appearing before such court under such recognizance, together with compensation for their trouble and loss of time, in the same manner as courts are authorized and empowered to order the same in cases of felony."

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satisfied that the case was originally brought before the justices to be dealt with summarily. It certainly seems very strange that I should have no power to award costs in a case of assault, where the party charged is brought before the justices in the ordinary way, to be committed for trial; but there being that distinction, I must have some evidence that the party charged was brought before the committing magistrates for summary jurisdiction. In other respects I think this is an assault in which costs ought certainly to be allowed.

Carrington then produced the original summons, and handed it to the learned judge. It was in the following form:—

“Whereas information and complaint has this day been made before the undersigned [&c.], for that you the said Hugh M'Gavaran did assault and illtreat Emma Preston, of the parish of Chieveley aforesaid, against the form of the statute in that behalf. These are, therefore, to command you, in Her Majesty's name, to be and appear on Thursday, the 27th day of May instant, at eleven o'clock in the forenoon, at [&c.], *to answer the said information and complaint, and to be further dealt with according to law.*”

Mr. JUSTICE WILLIAMS said he thought this was sufficient evidence to show that the justices might have dealt summarily with the case, and he therefore directed the costs of the prosecution to be allowed.

OXFORD CIRCUIT.

OXFORDSHIRE SUMMER ASSIZES, 1852.

Oxford, July 17.

(Before Mr. JUSTICE WILLIAMS.)

REG. v. NEVILLE. (a)

Perjury—Variance—Amendment—Statute 14 & 15 Vict. c. 100, s. 1—Evidence.

In an indictment for perjury, the perjury was alleged to have been committed on the trial of an indictment against B., for setting fire to a certain barn of one P. In support of the averment, a certificate of the trial and conviction of B. was produced, but the offence there mentioned was setting fire to "one stack of barley." It appearing that the offence was, in fact, the same, the barn and the stack having been destroyed by one fire,

Held, that the indictment might be amended under the 14 & 15 Vict. c. 100, s. 1.

A witness for the prosecution called to prove that B. was not at the barn at the time it was set on fire (and consequently that the evidence of the defendant who swore at the trial that he had seen B. set it on fire, was false), admitted on cross-examination that he had given a different account on the former trial, and had on that occasion corroborated the testimony of the present defendant, but now alleged that he was persuaded by W. (who had left England) to forswear himself on the former trial.

Held, that on re-examination the witness might be asked whether he had made a statement to C. immediately after the trial respecting his evidence and respecting W., and that C. might be called to corroborate him as to the general fact, but that the particulars of the statement to C. were inadmissible, and that a person who was present at the interview between the witness and W. might be called to prove the fact of the conversation, but not the particulars.

THE defendant, Edward Neville, was indicted for perjury. The indictment alleged that, "at a General Sessions of Oyer and Terminer and General Gaol Delivery of the gaol of our said Lady the Queen for the county of Oxford, holden at Oxford, in and for the said county, on the 16th day of July, A.D. 1851, before Sir William Erle, Knight, one of the justices of our said

(a) Reported by J. E. DAVIS, Esq. Barrister-at-Law.

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Lady the Queen, assigned to hold pleas before the Queen herself, and Sir Samuel Martin, Knight, one of the Barons of our said Lady the Queen, of her Court of Exchequer, justices assigned to deliver the said gaol of the prisoners therein being, one John Barnes, one Benjamin Barnes, and one Richard Gascoigne were in due form of law tried by a certain jury of the county aforesaid, upon a certain indictment then and there depending against them for having, on the 7th day of March, in the year of our Lord 1851, at the parish of Bloxham, in the county aforesaid, feloniously, unlawfully, and maliciously set fire to a *certain barn* of one James Page, there situate, with intent to injure the said James Page. The indictment then proceeded to aver that Edward Neville was duly sworn as a witness, and that upon the said trial "it became and was a material question and subject of inquiry, whether the said Benjamin Barnes set fire to *the said barn* of the said James Page, and whether the said Benjamin Barnes was at the said barn on the day of the fire of the said barn, to wit, on the said seventh day of March, in the year aforesaid, and whether the said Edward Neville saw the said Benjamin Barnes come through a gate called the Clap-gate, at Bloxham aforesaid, on the day last aforesaid, and whether the said Edward Neville, on the day last aforesaid, saw the said Benjamin Barnes strike a match on a tombstone in the churchyard at Bloxham aforesaid, and whether the said Edward Neville saw the said Benjamin Barnes put the said match in his the said Benjamin Barnes' hat, and whether the said Edward Neville saw the said Benjamin Barnes then go to the said barn, and whether the said Edward Neville saw the said Benjamin Barnes light a piece of paper, and put it into a hole in the wall of the said barn; and whether the said Edward Neville saw the said Benjamin Barnes go back through the said Clap-gate; and whether the said Edward Neville saw the said Benjamin Barnes running, and whether the said Edward Neville went to look after the said Benjamin Barnes, and whether the said Edward Neville saw the said Benjamin Barnes and the said Richard Gascoigne running across a certain close, called the Clump Ground, towards a certain road, called the Barford-road; and the jurors first aforesaid, upon their oath aforesaid, do further present, that the said Edward Neville, being so sworn as aforesaid, devising and wickedly intending that the said Benjamin Barnes should be unjustly convicted of the said felony so charged against him, then and there, to wit, on the said sixteenth day of July, A.D., 1851, at the said General Session of Oyer and Terminer, and Gaol Delivery of the gaol aforesaid, on the trial of the said indictment, and as such witness as aforesaid, and so being sworn as aforesaid, unlawfully, falsely, corruptly, knowingly, wilfully, and maliciously, did before and to the said court and jury, depose and swear and give evidence amongst other things in substance and to the effect following; that is to say, that he the said Edward Neville, on the day of the fire at the said barn (meaning the said seventh day of March in the year aforesaid), saw the said Benjamin Barnes come through the

Clap-gate (meaning the Clap-gate aforesaid), that a person coming from Milton-Lane would come through the Clock-close; that he the said Edward Neville saw him (meaning the said Benjamin Barnes) strike a match on the first tombstone in the churchyard (meaning the churchyard aforesaid), that he (meaning the said Benjamin Barnes) put it (meaning the said match) in his hat, and then went to Mr. Page's barn (meaning the said barn) and lighted a piece of paper and put it into a hole in the wall (meaning the wall of the said barn); that he (meaning the said Benjamin Barnes) went back through the Clap-gate (meaning the said Clap-gate), that he (meaning the said Benjamin Barnes) ran; that when he (meaning the said Benjamin Barnes) had got through the Clap-gate, he the said Edward Neville went to look after him (meaning the said Benjamin Barnes); that he (meaning the said Benjamin Barnes) and Gascoigne (meaning the said Richard Gascoigne) were running across the Clump-ground (meaning the said close called the Clump-ground) toward the Barford-road (meaning the said road called the Barford-road.) Whereas in truth and in fact the said Benjamin Barnes did not set fire to the said barn, nor was the said Benjamin Barnes at the said barn on the day of the fire when the said fire commenced. And whereas in truth and in fact the said Edward Neville did not on the day last aforesaid see the said Benjamin Barnes come through the said gate," &c. (and so on, negating the truth of all the defendant swore.)

Cripps, for the prosecution.

Pigott, for the defendant.

It appeared from the statement of the case for the prosecution, that several fires occurred at Bloxham, about the month of March, 1851, which were the subject of several indictments against Benjamin Barnes and others. It also appeared that the burning of the barn was accompanied by the burning of a stack of barley adjoining. To prove the inducement in the indictment, a certificate of the conviction of Benjamin Barnes was produced. It was in the following terms:—

"At the Assizes and General Session of the Delivery of the Gaol of our Lady the Queen, holden at Oxford, on Wednesday, the 16th day of July, in the fifteenth year of the reign of our Sovereign Lady the Queen, before Sir William Erle, Knight, one, &c., Sir Samuel Martin, Knight, and other their fellows, justices of our said Lady the Queen, assigned to deliver her gaol of the prisoners therein being, Benjamin Barnes was, in due form of law, tried and convicted on a certain indictment against him, for that he, on the 7th day of March, in the fourteenth year of our said Lady Queen Victoria, with force and arms, at the parish of Bloxham, in the said county of Oxford, feloniously, unlawfully, and maliciously did set fire to one stack of barley, of the value of twenty pounds, of the property, goods, and chattels of James Page, against the form of the statute in such case made and provided, and against the peace, &c.; and the said Benjamin Barnes was there-

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upon ordered to be transported beyond the seas for the term of his natural life."

Pigott (for the defendant) objected that there was a variance between the averment in the declaration and the certificate produced in support of it. The indictment alleged the perjury to have been committed on the trial of an indictment for setting fire to a barn of James Page. The certificate of conviction related to a charge of setting fire to a stack of barley.

WILLIAMS, J.—There is a variance certainly; but is it not amendable?

Pigott submitted that the indictment was not amendable. This was a different charge, and the defendant would be prejudiced by the amendment.

WILLIAMS, J., after referring to the statute 14 & 15 Vict. c. 100, s. 1, (b) said,—The case is within the words of the section, "in the name or description of any matter or thing whatsoever therein named or described." It is quite clear that I can amend. How can it be said that the defendant is prejudiced? This is one of the very cases for which the statute was passed, the want of this power of amendment being long a disgrace to the law.

The indictment was then amended by the deputy clerk of assize, and the following entry of the fact inserted in the margin:—"Summer Assizes, July 14, 1852. It appearing to the court here that in this indictment there is a variance between the statement herein and the evidence offered in proof thereof, it is ordered by the court that the said indictment be amended by striking out in the sixth line thereof the words, '*a certain barn,*' and inserting, instead thereof, the words, '*one stack of barley,*' and that the said indictment be further amended by striking out of the said sixth line the words '*there situate, with intent to injure the said James Page,*' and by striking out of the fourteenth line of the said indictment the words, '*the said barn,*' and inserting, instead of the said last-mentioned words, the words, '*a certain barn.*'"

The case then proceeded. It appeared that the conviction of Benjamin Barnes was chiefly owing to the evidence of Edward

(b) "Whenever on the trial of any indictment for any felony or misdemeanor there shall appear to be any variance between the statement in such indictment and the evidence offered in proof thereof, in the name of any county, riding, division, city, borough, town corporate, parish, township, or place mentioned or described in any such indictment, or in the name or description of any person or persons, or body politic or corporate, therein stated or alleged to be the owner or owners of any property, real or personal, which shall form the subject of any offence charged therein, or in the name or description of any person or persons, body politic or corporate, therein stated or alleged to be injured or damaged, or intended to be injured or damaged by the commission of such offence, or in the Christian name or surname, or both Christian name and surname, or other description whatsoever, of any person or persons whomsoever therein named or described, or in the name or description of any matter or thing whatsoever therein named or described, or in the ownership of any property named or described therein, it shall and may be lawful for the court before which the trial shall be had, if it shall consider such variance not material to the merits of the case, and that the defendant cannot be prejudiced thereby in his defence on such merits, to order such indictment to be amended according to the proof by some officer of the court or other person, both in that part of the indictment where such variance occurs and in every other part of the indictment which it may become necessary to amend," &c.

Neville, the defendant, who had been originally taken into custody on the charge of arson. His evidence, however, at the trial of Benjamin Barnes, was corroborated to some extent by Charles Heming, who deposed that he was with Benjamin Barnes and Richard Gascoigne on the day of the fire in the Barford-road,¹ and that they left him and went in the direction of Mr. Page's premises, and afterwards rejoined him again; the time they were absent corresponding with the act of incendiarism. It was now opened by the counsel for the prosecution that Neville was the real incendiary, and that the evidence of Heming, as far as it implicated Barnes, was untrue; that the witness had originally given a true account to Morgan, a parish constable, but that afterwards a person named Walker, who had been governor of Banbury gaol, and had taken an active part in getting up the case for the prosecution against Barnes and Gascoigne, but had since left the country in debt, induced Heming, by promises and threats, to implicate Barnes.

Heming was now called as a witness, and swore that Barnes was with him at the time the fire broke out, and did not leave the Barford-road. After the fire, he was called upon to give evidence, and saw constable Morgan, and told him the facts as he now repeated them.

On cross-examination Heming said:—I swore on a former occasion that when I saw Benjamin Barnes come up to Gascoigne, at Fowler's-corner, both Barnes and Gascoigne stepped back together, whilst I went on towards Barford. I have also said that I had gone on about half an hour, when I heard a great slam between Page's stone hill and the road, and that I saw Gascoigne and Barnes come running fast up to me, sweating and panting. They breathed as if they had run and were out of breath. I swore that Gascoigne loitered in the field, and that Barnes and I went on to where Alfred Baughen was working on the road, and that Gascoigne came up whilst I was talking to Baughen. I swore that Gascoigne said—"What a smoke there is. I wonder where it is—it is at Mr. Page's." It is all untrue. I swore it once before the justices, and again before the judge at the assizes. I say now that it is untrue. I swore it because I was forced to do it. Walker forced me; he said he would transport me if I did not. He gave me a written statement for me to learn, and I learnt it in five minutes. Time after time he told me, and I could repeat it word for word. Joseph Barnes, the father of Benjamin, asked me to come and admit I was a perjured man, more than five months ago. I could not rest until I had done it. That is my reason for coming and altering my evidence. On the Monday after the fire, Benjamin Barnes came to my father's house, and told me I was to speak the truth about him. That is all he said to me. I swore before the justices and at the assizes that he came to my father's house, and said—"Charles, don't you go to say anything about me if the police comes after me." Walker forced me to say that, and he wrote it down for me. He fixed the particular day of the week, and the day of the month. I learnt this about a week before I was examined by the magistrate.

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Re-examined.—John White, of Bloxham, was present when I saw Walker. Walker gave me a piece of paper; he asked me if I could read. I said I didn't know (or something of that kind) whether I could read or not. White said—"He can read as well as we can." I said so because I did not want to read the statement. I had seen Walker the same night before he brought me the paper, and I had told him what I was going to say, and he said that would not do. He then put me in the back parlour, and said he would transport me. He also said he would give me 10*l.*, and I should have some more when we got the reward. We were some time talking about this, and he then went away, and after that he brought me the written statement. I saw Walker six or seven times between that time and the assizes. Upon all those occasions he talked to me about what I was to say. After the trial I saw Capes, Mr. Page's shepherd.

Pigott interposed, and objected that any statement to Capes would be inadmissible, and he supposed it was for the purpose of introducing such statement that the question about Capes was put to the witness.

WILLIAMS, J.—I must admit it in a general way, for this reason: The witness, on cross-examination, said that four or five months ago Barnes's father came to ask him to admit that he had perjured himself. If the witness had previously told Capes, that would tend to explain it. I think the witness may be asked whether he made a statement, and Capes may be called to show that he did make a statement, just as in cases of rape, but the evidence must not go further.

The following questions were then put by *Cripps* to the witness:—

Did you see Capes ten minutes after the trial?—I did.

Did you make a statement to him about your evidence?—I did.

Did you also make a statement as to Walker?—I did.

Henry Capes was then called. He said, I am shepherd to Mr. Page. I was in Oxford at the time of Barnes's trial. I saw Heming about ten minutes after it was over. He made a statement to me about what he had been saying. He did not say anything about Walker.

John White stated that he was at the Hawk and Partridge public-house, at Bloxham, some days after the fire. Walker came there, and the witness was sent to bring Heming to him. Heming came. Walker produced a piece of paper.

On the witness being asked whether he heard Walker say anything to Heming—

Pigott again objected that this evidence was inadmissible.

WILLIAMS, J.—The question arises in this way. Heming is a witness. You impeach his credibility by showing that he made contradictory statements at other times. This evidence is to set him up. The question is, whether it is admissible for that purpose. This is an exception to the general rule. You may put a document into a witness's hands in order to show that he made a statement elsewhere, but you are not at liberty to prove that a

man is guilty of a crime if he denies it. The exception has reference to statements. Then supposing a witness accounts for a particular statement he has made, by saying that he was mad at the time, could you call a physician to prove that he was subject to attacks, and at that time insane?

Pigott.—I should submit not, for that would be a collateral issue.

Cripps.—Surely it is competent for me to ask whether Walker said anything. I wish to show why the witness made that discrepant statement.

WILLIAMS, J.—I think all you can do, is to give general evidence. I think you cannot go further. You cannot have the particulars of the statement.

The question was then put to the witness, and in reply he stated that Walker said something to Heming when he gave him the paper.

Pigott having subsequently withdrawn the objection to the evidence, the witness proceeded to state all that was said between the parties in his hearing. It amounted to nothing more than that Walker told Heming the paper contained what he had stated, and that he might have it to look at.

George Morgan, the parish constable was called, and stated that he saw Heming the day after the fire, and took down his statement in writing. The witness then read the statement which was in substance what Heming stated in his evidence on the present occasion.

The defendant was ultimately acquitted.

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STAFFORDSHIRE SUMMER ASSIZES, 1852.

Stafford, July 22.

(Before Mr. JUSTICE WILLIAMS.)

REG. v. FREAKLEY. (a)

Practice—Discharge of recognizances.

Where a prisoner has been committed for trial at the assizes, and parties bound over by a magistrate to prosecute and give evidence, the judge will not discharge the recognizances on an intimation that the Attorney-General does not think it a proper case for prosecution. Semble, the proper course is for the Attorney-General to enter a nolle prosequi.

BROS applied to have the recognizances discharged in the case of Edwin Freakley, a prisoner committed for trial under a magistrate's warrant, for stealing a post-letter containing money.

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

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The Attorney-General, however, did not think that it was a proper case for prosecution, and therefore this application was made on the part of the prosecution, that the recognizances of the witnesses might be discharged.

WILLIAMS, J., after consulting Mr. Hemp, the deputy clerk of assize, said:—A difference of opinion or of practice appears to exist among the judges, on the proper course to be pursued in such a case. I cannot see the principle on which a judge is to discharge the recognizances. The parties are duly bound over by a magistrate to prosecute and give evidence, and why should I, on a mere suggestion, discharge that obligation? The Attorney-General can enter a *nolle prosequi* if he pleases.

Bros referred to a case at Gloucester, at the last Spring Assizes, where he made a similar application to Mr. Baron Platt, who complied with it.

WILLIAMS, J.—I will consult with my brother Cresswell on the point.

At a subsequent period of the assizes, on a renewal of the motion, Mr. Justice Williams refused it, and the case took the ordinary course, the parties being called on their recognizances, and the prisoner discharged by proclamation.

OXFORD CIRCUIT.

STAFFORDSHIRE SUMMER ASSIZES, 1852.

Stafford, July 23.

(Before MR. JUSTICE WILLIAMS.)

REG. v. RYCROFT AND OTHERS. (a)

Conspiracy—Right of a defendant to particulars of charge.

Where an indictment for conspiracy charges the offence in general terms, the defendant is entitled to particulars of the charge, although there has been a previous committal by a magistrate.

Therefore, where an indictment contained counts charging a conspiracy to cheat tradesmen of goods, without mentioning any specific case, or name, time, or place,

Held, that the defendant was entitled to such particulars.

THE grand jury having returned a true bill against Thomas Rycroft, Edward Beeson, and Mary Roberts, for conspiracy to cheat and defraud divers tradesmen of goods,

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

Huddleston, for the defendant Beeson, applied to the court, as a matter of right, to order the prosecution to furnish particulars of the conspiracy charged. The indictment contained ten counts, and some of them were very general. The 1st count merely charged the defendant with conspiring to cheat such tradesmen as might or could be induced by the defendants to supply them with goods, upon credit of such goods; and the 2nd count was just as vague; no name, time or place were given. There were several cases in the Queen's Bench where the court had ordered particulars, but it is true those were cases where there had not been any committal by a magistrate; but in the case of *Reg. v. Rowlands*, which was a charge of unlawful combination and conspiracy among workmen, and where there had been a committal by magistrates, Mr. Justice Erle, before whom the parties attended at chambers, on a summons for particulars of the charges, made an order that they should be furnished.

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Huddleston also applied to be furnished with the names of the witnesses for the prosecution. He asked for the particulars of the charges as a matter of right, and for the names of the witnesses as a matter of favour.

Macnamara (who was with *Scotland* for the prosecution) said the prosecutors were willing to comply with the application, if the court thought it proper.

WILLIAMS, J.—This is a very different case from the one mentioned to me the other day. (b) The present application is made on the ground that the counts charging the conspiracy are general. In such a case I think the parties have a right to be furnished with the particulars of the charge.

Macnamara.—They shall be supplied with them, and also with the names of the witnesses.

The defendants were subsequently tried and convicted.

(b) In the case of *Reg. v. Road*, referred to by Mr. Justice Williams, several parties had been indicted at the Spring Assizes for conspiring to sell unsound horses, and several of them convicted. The defendant was included in that indictment, but not being in custody was not then tried: having subsequently surrendered to take his trial at the summer assizes, *P. M'Mahon* applied for particulars of the charges, but Williams, J., declined to accede to the application.

OXFORD CIRCUIT.

GLOUCESTERSHIRE SUMMER ASSIZES, 1852.

Gloucester, August 10.

(Before Mr. JUSTICE WILLIAMS.)

REG. v. BARRETT. (a)

*Practice—Expenses of apprehension of prisoners—Statute 7 Geo. 4, c. 69.**A judge has no power to order payment of the expenses incurred in the apprehension of a prisoner who had left England, nor has the committing magistrate power, under the stat. 7 Geo. 4, c. 64, to certify for such expenses.**Semble, the proper course under such circumstances is to memorialize the Secretary of State, who will refer to the judge for his opinion as to whether it is a proper case for the allowance of the costs of apprehension.*

THE prisoner was indicted for forgery. The first count of the indictment on which the prisoner was arraigned charged him with having, at Gloucester, on the 28th of April, 1851, forged an acceptance to a bill of exchange for 359*l.* 17*s.* 11*d.*, with intent to defraud. A second count charged the prisoner with uttering the same bill.

The prisoner, with the consent of his counsel, pleaded guilty.

Keating, Q. C. (for the prosecution), applied to the judge to have the expenses attendant upon the prisoner's apprehension allowed. The prisoner, before the discovery of the forgery, and before the bill of exchange became due, had gone with his family to America, and a considerable sum had been expended in following, apprehending, and bringing him back.

WILLIAMS, J., said he had no power to order these costs to be allowed. Mr. Justice Cresswell had held, at Monmouth, the week before, that neither the committing magistrate, nor the judge at the trial, had power to order the costs of a prisoner's apprehension in Scotland. (b) The proper course was to memorialize the Secretary of State, and then, probably, the judge would be referred to, and he would report his opinion whether it is a fit case for the allowance of such expenses.

Keating, Q. C., and *Guise*, for the prosecution.

Allen, Serjt., and *Huddleston*, for the prisoner.

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

(b) In the case referred to (*Reg. v. Seaton*, Monmouth, August 3, 1852), the prisoner was indicted for larceny, and also for embezzlement, and acquitted. *Skinner*, for the prosecution, subsequently applied for the costs of the prisoner's apprehension in Scotland. The committing magistrate had certified for those costs, but the officer felt a difficulty in allowing them. Cresswell, J., after referring to the statute 7 Geo. 4, c. 64, held that the magistrate had no power to certify for such expenses.

OXFORD CIRCUIT.

GLOUCESTERSHIRE SUMMER ASSIZES, 1852.

Gloucester, August 11.

(Before Mr. JUSTICE WILLIAMS.)

REG. v. AMBURY. (a)

Returning from transportation—Evidence—Certificate of conviction and sentence—Statute 5 Geo. 4, c. 84, s. 24—Power of judge to order a reward under sect. 22.

A certificate of previous conviction for felony, prepared under the 7 & 8 Geo. 4, c. 28, s. 11, which makes "a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony," evidence, and which certificate states that the prisoner "was thereupon ordered to be transported beyond the seas for the term of his natural life," is good evidence of his conviction and sentence, on an indictment for returning from transportation before the expiration of a sentence under the 5 Geo. 4, c. 84, which makes "a certificate in writing containing the effect and substance only (omitting the formal part) of every indictment and conviction of such offender, AND OF THE SENTENCE OR ORDER FOR HIS OR HER TRANSPORTATION OR BANISHMENT," evidence of the conviction, &c. The judge, on the trial, has power to make an order on the treasurer of the county for the reward of 20l. given by the 5 Geo. 4, c. 84, s. 22, to whoever shall discover and prosecute to conviction, any offender for being at large before the expiration of the sentence of transportation; confirming Reg. v. Emmons (2 M. & R. 280.)

THE prisoner, John Ambury, was indicted for returning from transportation before the expiration of his sentence.

The following certificate was given in evidence, on the part of the prosecution, to prove the conviction and sentence.

"*Gloucestershire.*—These are to certify, that at the Assizes and General Session of the Delivery of the Gaol of our Lady the Queen, holden at Gloucester, in and for the county of Gloucester, on Wednesday the 31st day of March, A.D. 1841, before certain justices of our said Lady the Queen, assigned to deliver the gaol of the said county of the prisoners therein being, John Ambury was in due form of law convicted of feloniously and burglariously breaking and entering the dwelling-house of Thomas Davis, and

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

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feloniously and burglariously stealing therein one piece of the current gold coin of the realm called a sovereign, one watch of the value of thirty shillings, one coat of the value of one pound, and four shirts of the value of seven shillings, of the goods and chattels of the said Thomas Davis, against the peace, &c.; and the said John Ambury was thereupon ordered to be transported beyond the seas for the term of his natural life. Dated the 12th day of June, 1852. (Signed) James Hemp, Deputy Clerk of Assize on the Oxford Circuit, and having the custody of the records of the said circuit."

W. H. Cooke, for the prisoner, objected that the certificate was insufficient. It was merely a certificate of a previous conviction for felony, under the 7 & 8 Geo. 4, c. 28, to prove a count in an indictment charging a felony after a previous conviction for felony. (b)

WILLIAMS, J.—That is so; but sect. 24 of the 5 Geo. 4, c. 84, makes a certificate of conviction and sentence sufficient proof on a charge of returning from transportation.

Cooke submitted that a more formal certificate was necessary than was required in the ordinary case under the 7 & 8 Geo. 4, c. 28. The sentence or order for transportation should be given with more certainty and precision. In the one case it was the fact of conviction for felony that was material, not the incidents, and therefore a bare certificate of that fact was sufficient, but here, on a charge of returning from transportation before the expiration of a sentence, everything depended on the nature of the sentence, and therefore it should be set out in a formal manner. The stat. 5 Geo. 4, c. 84, s. 24, (c) it was to be observed, enacted that the officer of the court should make out a certificate, containing the effect and substance only (omitting the formal part) of every indictment and conviction of such offender, and of the sentence or order for transportation. The formal part that was to be omitted related to the indictment and conviction, but the certificate, as regarded the sentence or order, must be full and formal.

(b) It appeared that the clerk of assize, not having been informed of the object for which a certificate was required, supplied the attorney for the prosecution with the ordinary form for the purpose of proving a previous conviction.

(c) The section is as follows:—"The clerk of the court or other officer having the custody of the records of the court where such sentence or order of transportation or banishment shall have been passed or made, shall, at the request of any person on His Majesty's behalf, make out and give a certificate in writing, signed by him, containing the effect and substance only (omitting the formal part) of every indictment and conviction of such offender, and of the sentence or order for his or her transportation or banishment (not taking for the same more than six shillings and eightpence), which certificate shall be sufficient evidence of the conviction or sentence or order for the transportation or banishment of such offender: and every such certificate, if made by the clerk or officer of any court in Great Britain, shall be received in evidence, upon proof of the signature and official character of the person signing the same; and every such certificate, if made by the clerk or officer of any court out of Great Britain, shall be received in evidence, if verified by the seal of the court, or by the signature of the judge, or one of the judges of the court, without further proof."

The enactment of the 7 & 8 Geo. 4, c. 28, s. 11, with reference to persons charged with committing felonies after a previous conviction for felony, speaks of "a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony, purporting to be signed by the clerk of the court or other officer," &c.

WILLIAMS, J.—The officer is directed to make out a certificate, and the statute describes what it is to contain; the effect of the indictment, conviction, and sentence, and then that is made evidence. Then, does this certificate comply with the requirements of the statute? I think it does.

The prisoner having been convicted,

Skinner, for the prosecution, applied for an order for the statutory reward of 20*l.* to be given for the discovery and prosecution of the prisoner. (*d*)

WILLIAMS, J.—I doubt if I have any power to make the order. I will give it if I have the power.

Skinner referred to the case of *Reg. v. Emmons* (2 Moody & Robinson, p. 280.)

WILLIAMS, J.—At present I do not see the faintest trace of any power in a judge to make an order. What are the circumstances of the case in Moody and Robinson? The learned judge, after reading that case, said,—“This is a very strong authority. It is a case in which Mr. Robinson was himself concerned, which vouches for its accuracy. There Mr. Robinson applied for an order on the county treasurer, directing the reward to be paid to the prosecutor. Mr. Justice Coleridge there thought as I did, that the words of the statute gave him no authority to make any order; a reward was given, but no provision being made for the mode of recovering it, he apprehended that the prosecutor must resort to the Home Office for payment. At a subsequent part of the day, Mr. Robinson said he had been furnished by Mr. Shuttleworth, the deputy clerk of the Crown for the county palatine, with a manuscript note, whereby it appeared that the same question had arisen on the northern circuit, soon after the passing of the act, before Mr. Justice Bayley, and that his Lordship had then said, that though it was true that the new act (5 Geo. 4, c. 84) omitted to point out (as the old act, 16 Geo. 2, c. 15, s. 3, pointed out) the fund from which the reward was to come, the twelve judges had, nevertheless, considered the point, and had come to an opinion that the order should still be made on the county treasurer; that the order was accordingly made by that learned judge, and that that precedent had been frequently followed on that circuit. Mr. Justice Coleridge thereupon made an order. That case is so expressly in point that I shall adhere to it and make the order.”

Order made accordingly.

(*d*) “Whoever shall discover and prosecute to conviction any such offender so being at large within this kingdom, shall be entitled to a reward of 20*l.* for every such offender so convicted.” (5 Geo. 4, c. 84, s. 22.)

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—
1852.

*Returning from
transportation
—Evidence—
Practice.*

OXFORD CIRCUIT.

STAFFORDSHIRE SUMMER ASSIZES, 1852.

July 23.

(Before Mr. JUSTICE WILLIAMS.)

REG. v. MITCHELL. (a)

Evidence—Map or plan where inadmissible.

A map or plan prepared for the purpose of a trial ought not to contain, any reference to transactions and occurrences which are the subject-matter of the investigation before the court, and not existing when the survey was made; and if it does, and the objection is taken, the court will not allow the jury to look at it.

JAMES MITCHELL was indicted for the manslaughter of Joseph Harrison, on the 5th of April, 1852, at Blore, alleged to have been occasioned by the negligence of the prisoner in riding over the deceased.

At the commencement of the case, a surveyor was called to prove a plan of the part of the turnpike road and houses adjoining, where the transaction occurred. In addition to the names of places, marks were represented on parts of the road and references to them, *e. g.*, "The place where the can of milk was spilt." "Direction in which Harrison was walking," &c.

The surveyor having admitted that he did not himself witness any of these occurrences, on the plan being handed to the jury,

Huddleston (for the prisoner) objected to the map in its present shape being looked at by the jury, as it contained statements not proved, and incapable of being proved in that manner. He referred to a passage in *Russell on Crimes*, by *Greaves* (vol. 1, p. 649), showing that a map of this kind was inadmissible.

WILLIAMS, J., after looking at the map, said it was clearly objectionable, and it was accordingly withdrawn, but was afterwards used, *Huddleston* waiving the objection.

Motteram and *Hunt*, for the prosecution, submitted that the plan might be used *de bene esse*.

The prisoner was acquitted.

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law

COURT OF CRIMINAL APPEAL.

November 13, 1852.(Before JERVIS, C.J., COLERIDGE, J., ALDERSON, B.,
CRESSWELL, J., AND PLATT, B.)

REG. v. POVEY.

*Bigamy—Foreign law—Scotch marriage—Expert.**On an indictment for bigamy, where it is necessary to prove a Scotch marriage, some witnesses conversant with the Scotch law on the subject of marriage must be called.*

THE following case was submitted to the court by the Common Serjeant of the City of London. At a General Session of Gaol Delivery, holden for the jurisdiction of the Central Criminal Court, on Monday the 25th day of October, 1852, William Henry Povey was tried before me on an indictment charging him with having, at the parish of St. Cuthbert, Edinburgh, in that part of Great Britain called Scotland, feloniously married one Isabella Graham, during the life of Jane, his wife.

To prove the marriage in Scotland, a witness was called, who stated that she (being the sister of Isabella Graham above named) was present at a ceremony performed by a minister of a congregation (but whether of the Kirk, she did not know), in the private house of the witness in Edinburgh; that the witness herself was married in the same way, and that parties were always married in Scotland in private houses; that the prisoner and her sister lived together in the witness's house as man and wife for a few days after the ceremony, and then left for England.

It was contended, on behalf of the prisoner, that better evidence of the validity of the second marriage according to the law of Scotland should have been given, and that some person sufficiently conversant with that law should have been called, to prove that it was a legal and valid marriage. I, however, left it to the jury to find the prisoner guilty if they would presume, from the facts proved, a marriage valid by the law of Scotland. The jury found him guilty. It appearing to me, however, that the point raised on the trial was one of doubt, and entitled to consideration, I postponed judgment, and committed the prisoner to the custody of

R. v. POVEY. the keeper of the gaol of Newgate until the next session, in order that your Lordships' opinion might be taken—

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Whether the evidence given was sufficient to justify the finding of the jury, or whether some witness conversant with the law of Scotland should have been called to say whether the facts proved constituted a valid marriage according to that law.

Parry, for the defendant.—It is necessary, first, to prove a marriage ceremony; and secondly, that it is valid according to the law of Scotland. But no marriage ceremony was proved at all; it was shown that some ceremony was gone through, but there was nothing to establish that it was a ceremony of marriage. Secondly, even if it was intended as a marriage, there is no evidence that it was valid by the Scotch law. The fact of the parties having lived together as man and wife, and the general reputation that they were married, would suffice for some purposes to raise an inference that they were so; but in criminal cases a valid marriage must be substantially proved: (*Morris v. Miller*, 4 Burr. 2059.) The court cannot take notice of the law of Scotland; it must be proved precisely in the same way as any other matter of fact. But what evidence was there that such a ceremony as was described by the witness constituted a valid marriage in Scotland? She knew nothing whatever of law, which could only be proved by an expert: (*Dalrymple v. Dalrymple*, 2 Hagg. Rep. 54; *Sussex Peerage Case*, 11 Cl. & Fin. 85.)

JERVIS, C. J.—We happen to know that if a man says to a woman before witnesses in Scotland—"I take you for my wife;" and the woman says—"I take you for my husband," and there is a subsequent cohabitation, that will be a valid marriage by the Scotch law; but we cannot judicially take notice that that is so.

Parry was then stopped by the court.

Robinson, for the Crown.—An expert is not necessary to prove the law of a foreign country. That was decided in *Vanderdonck v. Thellusson* (19 L. J. 12 C. P.), where the evidence of a merchant was received to prove the law of Belgium relating to bills of exchange.

JERVIS, C. J.—There it was rather a question of the custom of merchants than a question of law. On that subject a merchant would perhaps be the best authority.

Robinson.—The question was as to the law of Belgium. With us the custom of merchants is part of the law of the land, but it does not follow that such is the case in Belgium. The merchant might speak as to the usage of merchants; but if the strict rule contended for in this case had been adopted, a lawyer would still have been required to prove that such was a part of the law. *R. v. Dent* (1 C. & K. 97) is a case in point.

ALDERSON, B.—The House of Lords, in the *Sussex Peerage Case*, appears to have overruled that decision of Mr. Justice Wightman, who held that an unprofessional witness might prove the law of Scotland with regard to marriage.

Robinson.—In *Vanderdonck v. Thellusson*, both those cases were referred to, and yet it was distinctly laid down that professional knowledge was not absolutely essential, and that a practical knowledge of the law was sufficient. It would, therefore, be a question for the jury whether this witness had a competent knowledge of the law on this particular subject or not. She was married by the same ceremony herself, and might, therefore, well know that it was a legal form of marriage in that country.

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COLERIDGE, J.—But the witness does not even say that she is competent to give evidence as to the law of Scotland on the subject. For aught we know, her own marriage may have been invalid.

Robinson.—There is no direct statement that she knew the law; but it may be inferred from her evidence that she believed she did, and that she believed the marriage to be a valid one. And there was every reason why she should have made herself acquainted with the subject, both on her own and on her sister's account. The question is, whether for the prosecution a *prima facie* case has been made out. In the case of an English marriage, it is never held necessary to prove more than that a ceremony was performed in a church, by a minister who appeared to be a clergyman. The nature of the service is never gone into, nor the authority of the minister to undertake the office, nor the publication of the banns, nor that the parties are not within the canonical degrees of affinity; and yet the legal validity of the marriage would depend upon all these things. In *R. v. Hawes* (2 Cox Crim. Cas. 432), a marriage in a registered building was held to be *prima facie* proved, although no notice to the superintendent registrar, pursuant to the act, was produced or proved.

ALDERSON, B.—How can the jury be asked to say that the going through a ceremony is a crime, until they are told what that ceremony is?

Robinson.—At all events, the prisoner's conduct may be looked upon by the jury as an admission of this being a valid marriage. He evidently intended so to represent the ceremony, and he lives afterwards with the woman as her husband in the house of her sister. Suppose the prisoner had said: "I am legally married to this woman," that would be sufficient: (*Truman's case*, 1 East, P. C. 471; *R. v. Newton*, 2 M. & R. 503; *R. v. Simmonsto*, 1 C. & K. 164.)

JERVIS, C. J.—If the prisoner had said that he was legally married, perhaps that would have been sufficient.

Robinson.—Then it is a question for the jury whether his conduct does not amount to the same thing. There may be admissions by acts as well as by words.

JERVIS, C. J.—The question for us is whether there was sufficient evidence to go to the jury, and to justify them in finding the verdict they have done, or whether some witness conversant with the law of Scotland should not have been called to say whether the facts proved constituted a valid marriage according to the law

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of that country. This does not raise the question as to whether or not such witness should necessarily be an expert. It may not be necessary in all cases to have a professional person to tell us what a foreign law is, but we are clearly of opinion that some one ought to have been called who understood the law with respect to Scotch marriages. The witness does not profess to know the law, nor does she in fact say that the ceremony was a ceremony of marriage. And the fact of her having gone through the same service carries the case no further.

ALDERSON, B.—Reading this case, we cannot tell what the law of Scotland is; and unless we know that, we cannot tell whether or not this was a lawful marriage.

Conviction quashed.

Robinson for the prosecution.

Parry for the prisoner.

COURT OF CRIMINAL APPEAL.

November 13, 1852.

REG. v. MANNING AND SMITH. (a)

Larceny—Removal by a servant of his master's goods for the purpose of offering them again to the master for sale.

If a servant removes his master's goods from one part of the premises to another, for the purpose of enabling another person to offer them to the master for sale as the goods of that third person, and if this be done in pursuance of previous concert and arrangement between them, both may be convicted of larceny.

MICHAEL MANNING and John Smith were tried at the Manchester Borough Sessions, on the 5th August, 1852, for stealing on the 17th July, twenty-four bags, the property of John Sheridan. The prosecutor was a potato-dealer, and used bags in that trade, and he also dealt largely in bags which he bought and sold. The prisoner Manning had been for several years in the prosecutor's service, and had the care of his warehouse, in which the bags were kept. The prisoner Smith had for five years regularly supplied the prosecutor with bags, which he made, and from

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

time to time, when he had finished a lot, his custom was to take them and put them down at the warehouse-door of the prosecutor, outside the warehouse, and very shortly after any bags had been so left, either he or his wife, but generally his wife, used to come to receive payment for them from the prosecutor. On the night of the 16th July, the prosecutor had a quantity of bags in his warehouse "marked." On the morning of the 17th July, the prisoner Manning went into his master's warehouse and brought out twenty-four of the bags which had been so marked by his master on the previous night, and put them down outside the warehouse, by the door, at the place where Smith used to deposit the bags he brought for the prosecutor, and for which he had to be paid. Shortly after Manning had brought the prosecutor's bags out of his warehouse, and so placed them at the door, Smith's wife came and asked for payment for them, as for bags that her husband had brought that morning. Upon this Smith was sent for, and was told what his wife had said, and the bags, which were then lying where Manning had placed them, were pointed out to him, and he was asked whether he had brought those bags there; he said yes, he had brought them there an hour before, and that his wife had been working at them till twelve o'clock the night before, in order to finish them. "Nay," said the prosecutor, "those bags are mine." "Yes," replied Smith, "they will be yours when you have paid for them." Upon this the prosecutor pointed out to the two prisoners, Manning being then also present, the mark that had been put upon the bags the night before, when they both turned the colour of this (holding up a piece of red blotting-paper), and they were given into custody.

The Recorder told the jury that, if they were satisfied that Manning brought his master's bags out of the warehouse, and placed them outside by the door in the manner stated, for the purpose of enabling Smith to receive payment for them from his master, and with the intent that he should do so as if they had been new bags just then finished by Smith, and for which he would be entitled to be paid, that that would be larceny; and that if they were satisfied that this had been so done by Manning, in pursuance of previous concert and arrangement between him and Smith, that Smith, though absent when the bags were so removed out of the warehouse, would be accessary before the fact to the felony. The jury said that they were satisfied that the bags had been so removed out of the warehouse by Manning, for the purpose and with the intention aforesaid, and that the same had been done in pursuance of a previous arrangement between him and Smith, and they found both the prisoners guilty; and the Recorder sentenced the prisoners to be imprisoned in the borough gaol, and to be there kept to hard labour for six months. The question for the opinion of this court is, whether the facts stated and found amounted to larceny.

This case came on for argument before Jervis, C. J., Alderson, B., Coleridge, J., Cresswell, J., and Platt, B.

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Cross appeared in support of the conviction, but was not called upon.

No counsel appeared for the prisoners.

JERVIS, C. J.—This is a clear case. The direction was quite right; and *R. v. Hall* (1 Den. C. C. 381), is expressly in point.

ALDERSON, B.—Smith, though not present when the sacks were removed, was an accessory before the fact.

Conviction affirmed.

COURT OF CRIMINAL APPEAL.

January 22, 1853.

REG. v. RILEY. (a)

Larceny—Original taking by mistake—Felonious appropriation.

A., by mistake, took B.'s lamb from a field, together with his own flock.

Afterwards he discovered the mistake, but notwithstanding that discovery sold it with his own:

Held, a larceny, inasmuch as the original taking was a trespass, and the trespass continued up to the time of the fraudulent appropriation.

AT the General Quarter Sessions of the Peace for the county of Durham, held at the city of Durham (before Rowland Burdon, Esq., Chairman), on the 18th day of October, in the year of our Lord 1852, the prisoner was indicted for having, on the 5th day of October, 1852, stolen a lamb, the property of John Burnside. The prisoner pleaded Not Guilty. On the trial it was proved that on Friday, the 1st day of October, in the year of our Lord 1852, John Burnside, the prosecutor, put ten white-faced lambs into a field in the occupation of John Clarke, situated near to the town of Darlington. On Monday, the 4th day of October, the prisoner went with a flock of twenty-nine black-faced lambs to John Clarke, and asked if he might put them into Clarke's field for a night's keep, and upon Clarke agreeing to allow him to do so for one penny per head, the prisoner put his twenty-nine lambs into the same field with the prosecutor's lambs. At half-past seven o'clock in the morning of Tuesday, the 5th of October, the prosecutor went to Clarke's field, and in counting his lambs he

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

missed one, and the prisoner's lambs were gone from the field also. Between eight and nine o'clock in the morning of the same day, the prisoner came to the farm of John Calvert, at Middleton St. George, six miles east from Darlington, and asked him to buy twenty-nine lambs. Calvert agreed to do so, and to give 8*s.* a-piece for them. Calvert then proceeded to count the lambs, and informed the prisoner that there were thirty instead of twenty-nine in the flock, and pointed out to him a white-faced lamb; upon which the prisoner said, "If you object to take thirty, I will draw one." Calvert however bought the whole, and paid the prisoner 12*l.* for them. One of the lambs sold to Calvert was identified by the prosecutor as his property, and as the lamb missed by him from Clarke's field. It was a half-bred white-faced lamb, marked with the letter "T.," and similar to the other nine of the prosecutor's lambs. The twenty-nine lambs belonging to the prisoner were black-faced lambs. On the 5th October, in the afternoon, the prisoner stated to two of the witnesses that he never had put his lambs into Clarke's field, and had sold them on the previous afternoon, for 11*l.* 12*s.*, to a person on the Barnard Castle-road, which road leads west from Darlington.

There was evidence in the case to show that the prisoner must have taken the lambs from Clarke's field early in the morning, which was thick and rainy.

It was argued by the counsel for the prisoner, in his address to the jury, that the facts showed that the original taking from Clarke's field was by mistake; and if the jury were of that opinion, then, as the original taking was not done *animo furandi*, the subsequent appropriation would not make it a larceny, and the prisoner must be acquitted. The chairman, in summing up, told the jury, that though they might be of opinion that the prisoner did not know that the lamb was in his flock until it was pointed out to him by Calvert, he should rule that, in point of law, the taking occurred when it was so pointed out to the prisoner and sold by him to Calvert, and not at the time of leaving the field. The jury returned the following verdict:—The jury say that at the time of leaving the field the prisoner did not know that the lamb was in his flock, and that he was guilty of felony at the time it was pointed out to him.

The prisoner was then sentenced to six months' hard labour in the house of correction at Durham; and being unable to find bail, was thereupon committed to prison until the opinion of this court could be taken upon the question, whether Charles Riley was properly convicted of larceny.

Liddell, for the prisoner.—Either the ruling of the chairman was wrong, or the finding of the jury amounts to this, that the prisoner took by mistake; and in either case the conviction cannot be sustained. In order to amount to a verdict of guilty, the jury ought to have found that at the time the prisoner took the lamb, he either knew or had reasonable means of discovering the owner; and the court will not intend what the jury have not found. A

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special verdict is always to be construed most favourably for the prisoner: (1 Hale P. C.) Here the original taking was when the sheep left the field. [POLLOCK, C. B.—Was that a taking at all by the prisoner? Suppose a traveller by mistake packs up a fellow-traveller's goods with his own; and afterwards, upon discovering them, appropriates them to his own use, is there not at that time a taking by him *animo furandi*?] If there was no taking by the prisoner when the sheep left the field, it is at all events clear that the lamb did not remain in the prosecutor's possession; it was therefore *animal vagans*, and like waif or stray, of which the taking would not be larceny according to *Thurborn's case* (1 Den. C. C. 378.) If there was no taking by the prisoner in the first instance, then that case would apply; and there the rule is laid down that, in order to constitute larceny, the finding of the lost goods must be under such circumstances that the finder may be presumed to have known the owner, or to have had the means of ascertaining who the owner was. The jury have not found that that was the case here. This, however, is rather a taking by mistake in the first instance; and in 1 Hale P. C. 506, 507, it is said—"If the sheep of A. stray from the flock of A. into the flock of B., and B. drives them along with his flock, or by pure mistake shears them, this is not a felony; but if he knows it to be another's, and mark it with his mark, this is an evidence of a felony;" that is, evidence of a felony at the time when the thing taken leaves the possession of the prosecutor. The same law is laid down in 2 East P. C. 661; and in *Reg. v. Cook* (2 Russ. on Crimes, 12 (Ed. Greaves.) Cresswell, J., told the jury, that if a person find an animal straying in a road, and take it with intent to dispose of it to his own use, it is a larceny; and that in that case the question for their consideration was, whether the prisoner so took the ewe and the lamb, or whether they got mixed with the sheep he was driving, and he took them away by mistake. The facts were, that the prosecutor's flock of sheep had strayed through a gap into a road, and had all been recovered except the ewe and lamb mentioned in the indictment, which were afterwards seen grazing in a green lane, along which the prisoner was seen driving some sheep, and the prisoner some days afterwards sold the ewe and lamb, about ten miles from the place. If the original taking is by mistake, the subsequent appropriation cannot be larceny: (*Reg. v. Thistle*, 1 Den. C. C. 502.) In that case the prisoner, who was a watchmaker, had received the watches, which he was charged with stealing, from the prosecutor for the purpose of regulating them, and afterwards left the place, and disposed of the watches. He was held not guilty of larceny. Pollock, C. B., in delivering the judgment of the court, said—"The question reserved seems to be, whether, if the watches had come into the hands of the prisoner *rightfully in the first instance, that is, without an animus furandi on his part*, (b) the subsequent wrongful appropriation of

(b) This expression appears inaccurate according to the decision in the principal case.

them would constitute larceny? The court is of opinion that it would not." Here the possession was obtained in the first instance without any *animus furandi*. [WILLIAMS, J.—Assume that there had been no *animus furandi* at all in this case; would there not have been a continuing trespass, which would have supported a civil action? There was in fact no *animus furandi* at first, and therefore no felony then; but there was afterwards, and then there was a trespass *animo furandi*, which is larceny.] If the trespass began when the sheep left the field, then the rule applies that the first act of taking must be felonious. [POLLOCK, C. B.—The case is silent as to any act done by the prisoner, until he disposes of the prosecutor's lamb. There is no statement that he drove it away with his own.] Then the rule as to *animalia vagantia* applies. [PARKE, B.—Upon the facts stated, I think it sufficiently appears that the prisoner must have driven it away with his own, and "drove away" is the apt term for describing a larceny of sheep. It is "*cepit et effugavit*" in the old forms; and as to horses *cepit et abduxit*. Here there was a trespass at first: and it continued during the whole time that the prisoner had the lamb. If he had driven it into another county, it might have been alleged in the indictment that he *took it there*, so that whenever he chose to appropriate it, the taking became felonious.] That seems inconsistent with the judgment in *Thurborn's Case*. [PARKE, B.—No; that was quite a different case. It was a simple case of finding lost goods, the owner of which was not known to the prisoner, nor reasonably ascertainable by him at the time of the finding; and the distinction is, that the finding gives a title against all the world but the real owner. There was no trespass in the original taking; trover only could be maintained.] *Preston's Case* (2 Den. 360,) seems to have carried the doctrine further. There the court held that the *animus furandi* must exist at the time when the article first comes into the possession of the prisoner; and Martin, B., put the very case of a chattel taken originally by mistake; and afterwards wrongfully appropriated. [PARKE, B.—I am not disposed to agree that that would not be larceny.] The court appeared to be clearly of opinion that it would not; and Talfourd, J. expressly says that a mere movement of the mind cannot amount to a taking. [POLLOCK, C. B.—The operation of the mind in conjunction with the act of selling? As soon as the prisoner found the lamb amongst his own he sold it.] *Leigh's Case* (2 East P. C. 694) is an important authority on the point, that the conversion of goods is not felonious, unless the original taking was *animo furandi*. There the prosecutor's shop being on fire, the prisoner and other neighbours assisted in removing the goods with the prosecutor's consent. On the following morning, she denied that she had any of the prosecutor's things, but upon search, they were found concealed in her house. The jury having found that when she first took the goods from the shop, she had no evil intention, but that such evil intention came

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upon her afterwards, the judges held that there was no felonious taking but merely a breach of trust.

Grey, contra, was not called upon.

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POLLOCK, C. B.—We are all of opinion that the conviction is right. The case is distinguishable from those cited. *R. v. Thistle* decides only that if a man once gets into rightful possession, he cannot, by a subsequent fraudulent appropriation, convert it into a felony. So in *R. v. Thurborn*, in the elaborate judgment delivered by my brother Parke on behalf of the court of which I was a member, the same rule is laid down. It is there said that the mere taking up of a lost chattel to look at it, would not be a taking possession of it; and no doubt that may be done without violating any social duty. A man may take up a lost chattel and carry it home, with the proper object of endeavouring to find the owner; and then afterwards, if he yields to the temptation of appropriating it to his own use, he is not guilty of felony. In *Leigh's Case*, also, the original taking was rightful, but here the original taking was wrongful. I am not desirous of calling in aid the technicality of a continuing trespass; and I think this case may be decided upon the ground either that there was no taking at all by the prisoner in the first instance, or a wrongful taking, and, in either case, as soon as he appropriates the property, the evidence of felony is complete.

Judgment.

PARKE, B.—I think that this case may be disposed of on a short ground. The original taking was not lawful, but a trespass, upon which an action in that form might have been founded; but it was not felony, because there was no intention to appropriate. There was, however, a continuing trespass up to the time of appropriation, and at that time, therefore, the felony was committed. Where goods are carried from one county to another, they may be laid as taken in the second county, and the difference between this and *Leigh's Case*, as well as the others cited, is that the original taking was no trespass. It was by the implied licence of the owner, and the same thing as if he had been entrusted by the prosecutor with the possession of the goods.

WILLIAMS, TALFOURD, and CROMPTON, JJ., concurred.

Conviction affirmed.

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January 22, 1853.

REG. v. DALE. (a)

Stat. 9 Geo. 4, c. 61, s. 26—Application of penalties under the Alehouse Act—Conviction by borough justices—When penalty to be paid to county treasurer, and when to borough treasurer.

By section 26 of 9 Geo. 4, c. 61, it is provided, that so much of any penalty imposed under that act, as is not awarded to the prosecutor, is to be paid to the treasurer of "the county or place" for which the justice was acting when the penalty was imposed:

Held, that the word "place" in that section means a place for which a Court of Quarter Sessions is held.

Where, therefore, a penalty was imposed by two justices of a borough, which had a commission of the peace, but no Court of Quarter Sessions, and a moiety only was awarded to the prosecutor, the treasurer of the county was held entitled to the remaining moiety.

AT the General Quarter Sessions of the Peace of our Lady the Queen held at Alnwick, in the county of Northumberland, on the 20th October, in the sixteenth year of the reign of our Sovereign Lady Victoria, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, and in the year of our Lord 1852, before Her Majesty's justices of the peace assigned to keep the peace of the said county, the following case was agreed upon (that is to say):—

At the last Midsummer Quarter Sessions, an indictment, of which the following is a copy of the first count, and an extract from the second, was found by the grand jury to be a true bill.

"Northumberland, } The jurors, &c., present, that on the 19th of
to wit. } May, in the year of our Lord 1851, in the

borough of Tynemouth, in the county of Northumberland, one Joseph Gibbon was convicted before Alexander Bartleman and Solomon Mease, Esqrs., then and there being two of her Majesty's justices assigned to keep the peace in and throughout the said borough of Tynemouth, for that on, &c., he the said Joseph Gibbon, being then and there an alehouse-keeper, and duly licensed to sell exciseable liquors by retail in his house and premises there situate, did wilfully permit disorderly conduct in his house and

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premises, by then and there suffering persons, to the number of twenty and more, to remain fighting, drinking, and making a great noise and disturbance there at a late hour in the night, to wit, at twelve o'clock at night, against the tenor of his said licence, and contrary to the form of the statute in such case made and provided; and the said Alexander Bartleman and Solomon Mease, in and by the said conviction, then and there adjudged the said Joseph Gibbon, for his said offence, to forfeit and pay the sum of 2*l.* 10*s.*, to be paid and applied according to law; and also to pay to Robert Mitchell, the complainant, the sum of 10*s.* for his costs in that behalf; and the said Alexander Bartleman and Solomon Mease did by the said conviction then and there order, that if the said several sums were not paid forthwith, the same should be levied by distress and sale of the goods and chattels of the said Joseph Gibbon; and in default of sufficient distress, the said Alexander Bartleman and Solomon Mease did, by the said conviction, then and there adjudge the said Joseph Gibbon to be imprisoned in the house of correction at Morpeth, in the said county of Northumberland, there to be kept to hard labour for the space of one calendar month, unless the said several sums, and all costs and charges of the said distress, and of the commitment and conveying of the said Joseph Gibbon to the said house of correction, were sooner paid. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Alexander Bartleman and Solomon Mease did, at the time of making the said conviction, award one moiety of the said penalty to the use of the said Robert Mitchell, the said complainant, and the prosecutor of the said Joseph Gibbon for the said offence. And the jurors aforesaid, upon their oath aforesaid, do further present that the said Joseph Gibbon did thereupon afterwards, to wit, on the day and year first aforesaid, pay the sum of 2*l.* 10*s.* to one Henry Dale, late of the borough aforesaid, in the county aforesaid, gentleman, and who then was and still is clerk of her Majesty's said justices assigned to keep the peace of our said Lady the Queen, in, for and throughout the said borough; and the sum of 2*l.* 10*s.* was so paid to the said Henry Dale, and he then received the same as such clerk as aforesaid, and for the purpose and in order that it should forthwith be paid by him to the parties to whom the same was to be paid, in pursuance of and according to the said conviction, and the statutes in such case made and provided, to wit, one moiety to the said Robert Mitchell, as such prosecutor as aforesaid, and the remainder to the treasurer of the said county. And the jurors aforesaid, upon their oath aforesaid, do further present, that the justices of our said Lady the Queen assigned to keep the peace of our said Lady the Queen in and throughout the said borough, were, at the time of making the said conviction, and thence hitherto have been, acting and empowered to act within the said borough, by and under a commission of the peace from our Lady the Queen, which said commission did not nor does contain any grant of a court of quarter sessions of the peace for the said borough, and our said Lady the Queen had not then, or at any time since, granted that

a separate court of quarter sessions of the peace for the said borough should be holden in and for the said borough, nor were there then or at any other time any separate general or quarter sessions of the peace holden in or for the same. And the jurors aforesaid, on their oath aforesaid, do further present that, after the said sum of 2*l.* 10*s.* was so paid to the said Henry Dale as aforesaid, it became and was his duty to pay one moiety of the said sum of 2*l.* 10*s.* to one William Fenwick Blackett, Esq., who at the time of the making of the said conviction was, and from thence hitherto hath been and still is, treasurer of the said county of Northumberland, according to law, and to the statutes in that case made and provided. And the jurors aforesaid, upon their oath aforesaid, do further present that the said Henry Dale, well knowing the premises, although a reasonable time for his paying the said moiety of the said sum of 2*l.* 10*s.* to the said treasurer had elapsed long before the day of taking this inquisition, and although the said treasurer hath at all times been ready and willing to receive and give him a receipt for the same, hath yet hitherto unlawfully and contemptuously neglected and refused to pay, and still neglects and refuses to pay, the said moiety of the said sum of 2*l.* 10*s.* or any part thereof to the said treasurer, and he wrongfully and unlawfully detains the same and every part thereof from him, contrary to his duty in that behalf, against the form of the statute in that case made and provided, and against the peace of our Lady the Queen, her crown and dignity."

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There is a second count in the indictment, the same with the first, word for word, with this addition: "And the jurors aforesaid, upon their oath aforesaid, do further present that the said Alexander Bartleman and Solomon Mease, in the making of the said conviction, acted as such justices as aforesaid for the said county."

The usual process for that purpose having been issued, the defendant entered into a recognizance to appear at the next quarter sessions to try and answer to the said indictment.

At the Michaelmas Quarter Sessions, held 20th October, 1852, the said indictment was tried, and the jury found the defendant guilty. Whether the defendant is guilty or nor depends upon the construction which may be put upon the public acts of Parliament relating to this question, and which are to form part of this case.

The borough of Tynemouth was incorporated by royal charter, dated 6th August, in the year of our Lord, 1849, and a commission of the peace was granted to certain persons therein named, dated 26th March, in the year of our Lord, 1850; but no Court of Quarter Sessions was thereby granted. It is admitted, for the purposes of this case, that the defendant had paid over the moiety of the said fine to the treasurer of the borough of Tynemouth. Upon this, counsel for the defendant moved in arrest of judgment, contending that, upon the true construction of the statutes, he had duly discharged himself by paying over the money to the treasurer

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of the borough of Tynemouth. On the other hand, counsel for the prosecution contended that he had not discharged himself, as it was his duty to pay the moiety of the said fine to the treasurer of the county of Northumberland, the borough of Tynemouth being part and parcel of the county, and there being no grant of a Court of Quarter Sessions to that borough.

Accordingly, no judgment was passed, and the court postponed all further proceeding to the next sessions, and granted a case for the opinion of the Justices of either Bench, or the Barons of the Exchequer under the statute. The question for the opinion of the court is :

Whether the defendant is properly found guilty upon the indictment for neglecting and refusing to pay over one moiety of the said fine to the treasurer of the said county of Northumberland. If he is, the court will, at the next sessions, pronounce judgment against him. If he is not, he will be discharged from the said indictment.

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The 26th section of 9 Geo. 4, c. 61 (the Alehouse Act), enacts that it shall be lawful for any justice before whom any penalty shall be recovered under the provisions of this act, to award, if he shall think fit, any portion of the same, not in any case exceeding one moiety thereof, to the use of the prosecutor, and the remainder to the treasurer of the county or place for which such justice shall then act; and the said treasurer shall pay the same to the credit of such county or place, and shall duly account for the same.

By section 33 of the same act it is enacted :—" That every justice before whom any such conviction shall have been made, shall return the same, or cause it to be returned, to the general or quarter sessions of the peace holden for the county or place wherein the offence shall have been committed, and it shall be then and there delivered to the clerk of the peace or other person acting as such, to be by him filed or enrolled amongst the records of the said court; and the certificate of the clerk of the peace of such conviction, which he is hereby required to grant, on demand, upon payment of a fee of one shilling, shall be legal evidence of every such conviction."

By sect. 37 (interpretation clause), reciting :—" And in order to remove doubts as to the meaning of certain words in the act, be it enacted that the word 'justice' shall be deemed to mean justice of the peace, and that the words 'treasurer of the county or place' shall be deemed to include any officer acting in such capacity, or charged with the receipt and expenditure of moneys from and out of which the cost of public prosecutions have been usually defrayed; and the words 'clerk of the justice' shall be deemed to include any person acting as such; and the words 'county or place' shall be deemed severally to include any county, riding, division of the county of Lincoln, hundred, division of a county, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate; and the words 'division or place' shall be deemed to include any division of a county or riding, liberty,

division of a liberty, county of a city, county of a town, city, cinque port, or town corporate."

By the 126th section of 5 & 6 Will. 4, c. 76, *An Act to provide for the regulation of Municipal Corporations in England and Wales*, passed 9th September, 1835, it is enacted, "That when by any act any penalties or forfeitures are or shall be hereafter made recoverable in a summary manner before any justice or justices of the peace, and by such acts respectively the same are or shall be limited and made payable to His Majesty, or to any body corporate, or to any person whomsoever, save and except the informer, who shall sue for the same, or any party aggrieved, in every such case the same, if recovered and adjudged before any justice of any borough in which a separate Court of Quarter Sessions of the Peace shall be holden as aforesaid, shall, notwithstanding anything in such act respectively contained, be recovered for and adjudged to be paid to the treasurer of such borough for the time being, to the credit and on account of the borough fund of such borough; and no such penalty or forfeiture, or share of such penalty or forfeiture, shall in any case be recovered by, or adjudged to be paid to, any other person than the said treasurer, unless such person be the informer or the party aggrieved."

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By sect. 31 of 11 & 12 Vict. c. 43, it is enacted, "That in every warrant of distress to be issued as aforesaid, the constable or other person to whom the same shall be directed shall be thereby ordered to pay the amount of the sum to be levied thereunder unto the clerk of the division in which the justice or justices issuing such warrant shall usually act; and if any person convicted of any penalty or ordered by a justice or justices of the peace to pay any sum of money shall pay the same to any constable or other person, such constable or other person shall forthwith pay the same to such clerk; and if any person committed to prison upon any conviction or order as aforesaid for nonpayment of any penalty, or for any sum thereby ordered to be paid, shall desire to pay the same and costs before the expiration of the time for which he shall be so ordered to be imprisoned by the warrant for his commitment, he shall pay the same to the gaoler or keeper of the prison in which he shall be so imprisoned, and such gaoler or keeper shall forthwith pay the same to the said clerk, and all sums so received by the said clerk shall forthwith be paid by him to the party or parties to whom the same respectively are to be paid according to the directions of the statute on which the information or complaint in that behalf shall have been framed; and if such statute shall contain no such directions for the payment thereof to any person or persons, then such clerk shall pay the same to the treasurer of the county, riding, division, liberty, city, borough, or place for which such justice or justices shall have acted, and for which such treasurer shall give him a receipt without stamp; and every such clerk and every such gaoler or keeper of a prison shall keep a true and exact account of all such moneys received by him, of whom and when received, and to whom and when paid, in the

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form (T.) in the schedule to this act annexed, or to the like effect, and shall once in every month render a fair copy of every such account unto the justices, who shall be assembled at the petty sessions for the division in which such justice or justices shall usually act, to be holden on or next after the first day of every month, under the penalty of forty shillings, to be recovered by distress in manner aforesaid; and the said clerk shall send or deliver every return so made by him as aforesaid to the clerk of the peace for the county, riding, division, liberty, city, borough, or place within which such division shall be situate, at such times as the court of quarter sessions for the same shall order in that behalf."

November 13. (b)

Pashley, for the defendant.—This question turns upon the meaning of the words "county or place" in 9 Geo. 4, c. 61, s. 26; and it is submitted that "place" includes a town corporate, and that the penalty mentioned in the case was consequently payable to the treasurer of the borough of Tynemouth, and not to the treasurer of the county of Northumberland. In other parts of the statute "place" evidently has that meaning (he referred to ss. 1, 3, 4, 7, 21); and there is no reason for supposing that it has not an equally extensive sense in sect. 26. The interpretation clause, sect. 37, still uses the same words "county or place," and only extends the enactment to persons acting in the capacity of treasurers, though not so called. [JERVIS, C. J.—It is obvious from that clause that the intention was that the penalty was to go to a fund, out of which the costs of public prosecutions are defrayed; and that would be the county rate, where the borough has no court of quarter sessions.] If the borough has no quarter sessions, it contributes to the county rate; and Tynemouth was the place for which the justices who imposed the penalty in this case were acting. (He referred to 13 & 14 Vict. c. 91, s. 9; and *R. v. Sainsbury*, 4 T. R. 451.)

Otter, contra.—The defendant could only discharge himself by paying over the penalty to the county treasurer. The word "place" in sect. 26 must mean a place having a separate court of quarter sessions; and no difficulty is created by the words "for which the justice is acting," because in truth the borough justices within the borough have the same jurisdiction as the county justices, and may be described as acting for the county. It is supposed, that if the conviction is made by borough justices the penalty goes to the borough—if by county justices, then to the county; but in Tynemouth, the borough and county justices have concurrent jurisdiction; so that the conviction might be by one borough and one county justice. In that case, where would the penalty go? (sects. 101 and 111 of 5 & 6 Will. 4, c. 76.) The difficulty is avoided if the place is held to be a place of exclusive jurisdiction: (*R. v. Amos*, 2 B. & Ald. 533; *R. v. Taylor*, Salk.

(b) Before Jervis, C. J., Alderson, B., Coleridge, J., Cresswell, J., and Platt, B.

343.) In other parts of the statute "place" must mean a place having a separate court of quarter sessions: (sects. 4, 7, 22, 27, 29.)

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Pashley, in reply.—*R. v. Amos* has no application to this case. The court only decided that borough justices, who under 15 Geo. 2, c. 23, might commit prisoners to the County House of Correction, had incidentally the power of ordering them to be brought back again to be tried at the borough quarter sessions. It is no authority for the strange position that justices acting for a borough, and having only jurisdiction in the borough, can by construction of law be considered as acting for the county. On the other hand, if two county justices acted, they would act as justices for the borough in that instance, and they have concurrent jurisdiction within the borough. That observation removes the supposed difficulty of a conviction by one borough and one county magistrate. The penalty would still go to the borough, for both would be necessarily acting as borough magistrates.

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ALDERSON, B.—"Treasurer of the county or place" is defined to be any officer acting as treasurer—of what? "Of moneys from and out of which the costs of public prosecutions have been usually defrayed."

Pashley.—That is a strained construction of the words of that clause, which speaks of any officer "acting in *such capacity*," that is in the capacity of "treasurer of the county or place" for which the magistrate was acting.

Cur. adv. vult.

January 22.

JERVIS, C. J., now delivered the judgment of the court.—Whether the defendant is guilty or not guilty in this case depends upon the construction of the 9 Geo. 4, c. 61; and we are of opinion that, upon the proper construction of that statute, the defendant is guilty, and was properly convicted. The penalty, for the nonpayment of which to the treasurer of the county of Northumberland the defendant has been convicted, was in this case imposed under the Alehouse Act, 9 Geo. 4, c. 61, by justices acting for the borough of Tynemouth, which has a commission of the peace, but no court of quarter sessions; and the question is, whether that penalty ought to be paid to the treasurer of the county, or to the treasurer of the borough on account of the borough fund. By the 26th section of the Alehouse Act, so much of the penalty as is not awarded to the prosecutor is to be paid to the treasurer of the "county or place" for which the justice was acting when the penalty was imposed. The defendant's counsel contends that the word "place" must be understood in its ordinary sense; and that, inasmuch as the justices were acting for the borough of Tynemouth when the penalty was imposed, the treasurer of that borough is the person who ought to receive the penalty, and that it ought to be applied to the borough fund, under the provisions of the stat. 5 & 6 Will. 4, c. 76, s. 126. On

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the other hand, the prosecutor asserts that the word "place," as used in that section, means a place for which a court of quarter sessions is held. This, we think, is the right construction. In many of the sections in which the words "county or place" are used, it is manifest that the latter word applies only to places where quarter sessions are held. For instance, by the 27th section, parties aggrieved may appeal to the next general or quarter sessions of the peace of the "county or place" wherein the cause of complaint arose; and by the 33rd section the conviction is to be returned to the next general or quarter sessions of the peace of the "county or place" wherein the offence shall have been committed. The interpretation clause shows further, that it was intended that these penalties should be applied towards the costs of public prosecutions, and not to a borough fund, because it explains the words "treasurer of a county or place" to mean an officer acting in such capacity, or charged with the receipt and expenditure of moneys from and out of which the costs of public prosecutions have been usually defrayed. The person to receive the penalty is to be an officer acting in the capacity of treasurer of moneys for and out of which the costs of public prosecutions have been usually defrayed. In the same spirit the justices in quarter sessions are, by the 29th section, authorized to indemnify the justices from their costs upon an appeal in certain cases, and to order the treasurer of the "county or place" in and for which the justices acted to pay the amount. At the time the Alehouse Act passed corporations had private property, but no borough fund, properly so called, over which the Legislature could with justice exercise a control. The treasurer of the place meant in this section must clearly be the treasurer of a place having a court of quarter sessions—an officer under the control of the justices making the order, with a fund under their control. It would be strange that the same words should give to one fund, the borough fund, all the penalties for good convictions, and charge upon another fund, the county rate, all the costs for convictions which could not be sustained. For these reasons we think the conviction right.

Conviction affirmed.

COURT OF QUEEN'S BENCH.

January 29, 1853.

REG. v. THE INHABITANTS OF HOUGHTON. (a)

Indictment for non-repair of highway—Judgment upon former presentment—Estoppel.

Upon an indictment against a parish for the non-repair of a highway, and "Not guilty" pleaded, a former judgment upon a presentment against the inhabitants of the same parish for non-repair of the same road is conclusive evidence of the defendants' liability to repair, no fraud being imputed; and any evidence to show that the road is not situate in the parish indicted is inadmissible, even though it should be recited in a local act of Parliament as a fact that the road was in another parish, and though the presentment may, upon the face of it, show some defect, which would have been fatal on demurrer or in arrest of judgment, and the fine imposed upon the inhabitants was not proved to have been paid.

INDICTMENT for non-repair of a highway.*Plea.*—Not guilty.

At the trial which took place before Wightman, J. at Liverpool, during the last Summer Assizes, the prosecutors gave in evidence a former conviction of the defendants upon a presentment for the non-repair of the same road in 1791, with the judgment thereon imposing a fine. No evidence was given that the fine had been paid, and the defendants offered evidence to prove that the road in question was not in their township. They also relied upon a recital in a local act (59 Geo. 3, c. xxii.) stating as a fact that the road in question was situate in the parish of Denton. All this evidence was objected to on the part of the prosecution, but received by the learned judge, and a verdict was found for the defendants.

In the following term a rule *nisi* was obtained to enter the verdict for the Crown, on the ground that the judgment on the presentment was conclusive.

*January 19. (b)—Cowling and Holland showed cause.**Atherton, Monk, and Russell, contra.*

The following authorities were referred to: *R. v. Blakemore*, 21 L. J. 207, M. C.; *R. v. St. Pancras*, Peake, N. P. C. 219; 2 Smith's L. C. 427, in notes to the *Duchess of Kingston's case*;

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

(b) Before Lord Campbell, C. J., Coleridge, Wightman, and Crompton, JJ.

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 v. 57; *R. v. Eardisland*, 2 Camp. 495; *R. v. Denton*, 21 L. J.
 THE INHABITANTS OF 207, M. C.; *R. v. Whitney*, 3 Ad. & Ell. 69; *R. v. Middlesex*,
 HOUGHTON 1 B. & Ald. 64, n. *Cur. adv. vult.*

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JUDGMENT.—January 29.

Highway—
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LORD CAMPBELL, C. J., now delivered the judgment of the court.—In this case we are first to consider the general question, whether upon the trial of an indictment against the inhabitants of a parish or township for not repairing a highway, with the plea of not guilty, a prior judgment upon a presentment against the same defendants for not repairing the same highway to which they pleaded guilty, is conclusive evidence to prove that the highway is situated within the parish, and that the inhabitants are liable to repair it. Mr. Cowling very properly admitted that, as the prosecutor had no opportunity of putting the former judgment upon the record, it would not be less operative as an estoppel because not pleaded as such, if it would operate as an estoppel being pleaded, on the doctrine clearly established by the authority cited (*Reg. v. Blakemore*.) In *Rex v. St. Pancras* (Peake N. P. Cases, 219), it was laid down by Lord Kenyon that, under substantially the same circumstances, a prior judgment is conclusive evidence. This doctrine has been stated as clear law by every text writer who has since written upon it, and has been since particularly recognised by the judges; but it has never been the foundation of any solemn decision, and Mr. Cowling was at full liberty to controvert it. He begins very properly by pointing out that a former judgment would not have operated as an estoppel in *Rex v. St. Pancras*, as the former judgment there was upon an indictment against the parish of Islington; but Lord Kenyon said it may be conclusive evidence against the parish of Islington on another indictment against the same parish for not repairing the same part of the same highway, and it would not be competent to the defendants to contend that that part of the road mentioned in the indictment was not in their parish. We do not find that this doctrine is contradicted by any of the authorities cited by Mr. Cowling. In the *Duchess of Kingston's case*, the judgment of the Ecclesiastical Court was held not to be conclusive to disprove the first marriage, because it was only in a suit of jactitation of marriage, and that, if final, it was fraudulently obtained. In *Rex v. Whitney*, as this question did not arise, it can hardly be considered affected by the allusion to it in the judgment of Lord Denman. *Rex v. Eardisland* only shows that a judgment on a former indictment against a parish may be impeached on the ground of fraud, if the defence to an indictment against the parish be collusively conducted by the inhabitants of a particular township by whom the road ought to have been repaired, and the liability of the whole parish to repair the roads ought not to be established. The case of *Rex v. Denton*, before my brother Cresswell, is entitled to no weight, for, though the evidence may be said to have been pro-

duced to rebut the effect of the former words, the point of estoppel was not taken. On principle, Mr. Cowling objects to a judgment following conviction being conclusive against the parish, although the judgment would not have been evidence for the parish had there been an acquittal. This, however, does not proceed on the point of mutuality which ought to exist with respect to an estoppel, but only because the verdict of not guilty might have proceeded on the ground that the road was not out of repair; whereas, there could not have been a verdict of guilty, without a finding that the defendants were bound to repair the road, as well as that it was out of repair. The liability to repair being in issue, and they being bound by the verdict, followed by the judgment, on a subsequent indictment against the same parish for not repairing the same highway, the same question of liability again coming into issue,—according to the general doctrine of estoppel, on the former judgment being given in evidence, no fraud being imputed (which I hope will always be attended to, because in the case of a particular presentment there is danger of fraud, and very slight evidence would weigh with me to show it was collusive and fraudulent, and of no avail; but here no fraud is imputed, and that is one of the conditions of the proposition which is laid down)—no fraud being imputed, the defendants ought not to be allowed to give any evidence for the purpose of disproving the liability. Mr. Cowling has called upon us to respect the consciences of jurymen, who may thus be required to find a verdict contrary to what they know to be the fact; yet the oath taken by the jurymen is to “find a true verdict according to the evidence.” Now the former judgment is allowed to be evidence, and, according to the doctrine of estoppel, no other evidence can be laid before them; so that their finding, according to the judgment, is a true verdict in exact conformity to the oath they have taken. In *Reg. v. Blakemore*, though the doctrine was not in question, at least four of the judges expressed their entire assent to it; and the only doubt that existed was, whether the former judgment could operate as an estoppel without being put upon the record. With respect to the general doctrine, therefore, we are all against Mr. Cowling. But then he objects that in this case there should be no estoppel, because the presentment was bad upon the face of it in not stating how the inhabitants of Houghton were bound to repair the highway. We think, however, that, though the presentment might have been held bad for this defect on demurrer or in arrest of judgment, the defendants, having acquiesced in it, cannot now make the objection. The presentment aptly describes the road, and states it to be in the township of Houghton, and avers that the inhabitants of this township were bound to repair it; and these are the facts which are now again to be established. Mr. Cowling next objects that there was no evidence of the fine imposed being paid, as there was in *Reg. v. Blakemore*. Execution upon a judgment cannot be necessary to give effect to it as an estoppel if it were duly pronounced: and the non-payment of the fine might have been some

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evidence of collusion, but where no fraud is imputed it is wholly immaterial. Lastly, Mr. Cowling relies on the two acts of Parliament. Now this road is described as being in the township of Denton; but this is a mere recital in the first act of Parliament, which is repealed by the second. At most, therefore, it can only be considered as evidence that the road is in Denton, which, against the estoppel, cannot be admitted. Had there been anything amounting to an enactment that the road should be considered in Denton, this would be considered enough to prevent the estoppel; but a mere recital in an act of Parliament, either of fact or law, is not conclusive, and we are at liberty to consider the fact or the law different from the statement in the recital. These objections being overruled, it follows that the judgment on the presentment was conclusive evidence against the defendant, and that the rule must be absolute to enter the verdict for the crown.

Rule absolute.

SOUTH WALES CIRCUIT.

GLAMORGANSHIRE SPRING ASSIZES, 1852.

March 8.

(Before Mr. BARON MARTIN.)

REG. v. ELEANOR OWEN. (a)

Perjury—Corroboration—Materiality to the issue.

The prisoner was charged with perjury, for having falsely sworn before magistrates at petty sessions, that one D. R. was the father of her illegitimate child. At the trial of the prisoner the imputed father, D. R., swore that he never had intercourse with her. In corroboration of D. R., a witness was called who swore that the prisoner had told witness, at a time when she generally denied being with child, that "D. R. had never touched her clothes."

Held that, as the negation was made by the prisoner at a time when she generally denied being with child, it was so far a part of such general denial that, although it could not be altogether withdrawn from the jury, it was not a corroboration of D. R.'s testimony, on which alone they convict her.

Another assignment of perjury was that, on the same occasion, the prisoner had falsely sworn that her master, who was uncle of D. R., had promised her that he would raise her wages, and allow her to lie in at his house, if she would swear the child to a person other than his nephew, D. R.

Held, that such statement was not material to the issue so as to constitute the crime of perjury.

THE prisoner was indicted for wilful and corrupt perjury, in having sworn at the petty sessions, held at Llangefelach, in Glamorganshire, before J. V. Llewellyn and Iltd Thomas, Esqrs., justices, &c., that one David Rees was the father of her illegitimate child. The second assignment of perjury was, that she falsely swore at the hearing before the magistrates that she did not keep company with any other man than the said David Rees. The third assignment of perjury was, that on the same occasion she falsely swore that her master (who was the uncle of the said David Rees) had promised to raise her wages if she would swear the child to a man other than his said nephew David Rees, and

(a) Reported by D. T. EVANS, Esq., Barrister-at-Law.

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that he also further promised that if she would so do, he would permit her to lie in at his house.

Grove for the prosecution.

Benson for the prisoner.

A question was raised, on the first assignment of perjury in this indictment, whether proof by a witness other than the said David Rees, that the prisoner had said that "he had never touched her clothes," was a corroboration of David Rees's testimony on oath, that he never had intercourse with the prisoner, sufficient to convict her of this offence, such statement having been made at a time when she generally denied being in the family way at all.

MARTIN, B., said he thought that, under some circumstances, it might have been enough for that purpose, but that inasmuch as that negation had been made by the prisoner at a time when, as it appeared, she denied being in the family way at all, it was so far a part of such general denial that, although it could not be altogether withdrawn from the jury, it was not a corroboration of David Rees' testimony, upon which alone they could safely convict her.

Grove, after this ruling, did not press for a conviction on the second assignment.

Benson then objected that the matter alleged in the third assignment was not sufficiently material to the issue before the magistrates to fulfil the requirement of law that the false swearing must be on a point material to the issue.

MARTIN, B., expressed a strong opinion that what the prisoner had sworn at the petty sessions with respect to the promises made to her by her master, was not sufficiently material to the issue then before the justices, so as to amount to the crime of perjury. His lordship summed up, and left the case to the jury.

Prisoner acquitted.

SOUTH WALES CIRCUIT.

GLAMORGANSHIRE SPRING ASSIZES, 1852.

March 6.

(Before Mr. BARON MARTIN.)

REG. v. THOMAS MORGAN. (a)

Perjury—Judge's note—Advocate witness—Indictment, form of—"Contra formam statuti."

In support of an indictment for perjury, committed on the trial of a plaintiff in a County Court, it is not necessary to produce the judge's notes, if proof of the perjury can be established by witnesses who were present at the trial.

Semble, that it is no objection to a witness called for that purpose, that he acted as advocate and attorney against the prisoner at the trial of the plaintiff in the County Court.

An indictment for perjury committed by a party examined at the hearing of a plaintiff in a County Court as a witness in his own behalf, need not conclude against the form of the statute.

THE prisoner was indicted for wilful and corrupt perjury in the County Court of Glamorgan, before Thomas Falconer, Esq., the judge, on the trial of a plaintiff wherein the prisoner was the plaintiff, and was then examined on his own behalf. The indictment contained several assignments of perjury, and did not conclude *contra formam statuti*, but simply as an indictment at common law.

Grove, and Thomas Allen, for the prosecution.

Pulling for the prisoner.

The counsel for the prosecution called Mr. Verity, who had acted as advocate and attorney for one William Roper, the defendant in the plaintiff *Morgan v. Roper*, in the County Court, and they then proposed to prove by the notes of Mr. Verity, the statement of the prisoner at the hearing of the plaintiff.

Pulling objected that the notes taken by Mr. Verity were not the best evidence of what took place at the hearing of the plaintiff; that the judge's notes ought to be produced, and that no reason had been assigned for the non-production of those notes so as to let in other evidence.

Grove then put in a letter from Mr. Falconer, the judge of the County Court, refusing to attend the present trial.

(a) Reported by D. T. EVANS, Esq., Barrister-at-Law.

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MARTIN, B., said that if Mr. Falconer had been served with a subpoena to attend this trial as a witness, he could have been compelled to come; but there was in this case no necessity to subpoena the County Court judge; for the evidence of any one who was present at the hearing of the plaint, and who took notes of the evidence and swore positively to their accuracy, was admissible as primary, and not as secondary evidence.

Pulling then objected that the evidence of Mr. Verity was inadmissible, inasmuch as, in the matter respecting which he was to be examined as a witness, he had acted both as the attorney and advocate of the opposite party. In *Stones v. Byron* (16 L. J. 32 Q. B.; S. C., 4 Dowl. & Lowndes, 393), Patteson, J., in giving judgment observes:—"I think, where an attorney appears as advocate, and makes a speech to the jury, and cross-examines the witnesses on the other side, and addresses the jury in reply, and then afterwards tenders himself as a witness for his own client, it is not consistent with the proper administration of justice that he should be heard."

MARTIN, B.—This is not a case like *Stones v. Byron*, where the advocate in the suit was giving evidence in that identical suit, but a case where he is called to prove in a subsequent proceeding what took place in a cause tried elsewhere. Any arguments against the testimony of Mr. Verity are for the jury, rather than for the determination of the judge.

The deposition of the prisoner at the hearing of the plaint before the judge of the County Court was then proved by Mr. Verity from his notes as taken at the time, and certain of the facts then deposed to and assigned for perjury in the present indictment, were sworn by several witnesses to be false.

The prisoner was found guilty.

Pulling then moved in arrest of judgment, that the indictment disclosed no crime punishable at common law, and did not conclude *contra formam statuti*, as it should have done. At common law, the parties to a suit could not be examined as witnesses in that suit, and this indictment shows on the face of it, that the prisoner Morgan gave evidence in his own behalf on the hearing of the plaint in the County Court in which he was plaintiff. His evidence was there given by virtue of 9 & 10 Vict. c. 95, s. 83, and the offence set forth in the present indictment was only created by a subsequent section (s. 84) of the same statute.

MARTIN, B., said that he would not arrest the judgment on this objection, but remit the prisoner to his writ of error, if he should be advised so to proceed. The learned judge added that he was of opinion that the offence of perjury even by a party to the suit, was an offence at common law.

COURT OF COMMON PLEAS.

January 24 and February 4, 1852.

(Before MAULE, J., and WILLIAMS, J.)

WHITAKER v. WISBEY. (a)

Conviction of prisoner, date of—Estoppel by record—Assizes.

Although the entire period over which the assizes extend in one place is, by the contemplation of law, and for some purposes, one legal day, the particular day on which a prisoner's conviction took place may, when necessary, be shown; and the record does not operate as an estoppel so as to shut out evidence of the actual day on which the prisoner was convicted.

THIS was an action of trover, brought against the defendant, an auctioneer and agent, for the Crown, for the disposal of felon's goods.

Pleas.—1. Not guilty; 2. Not possessed.

The cause was tried before Cresswell, J., at the Summer Assizes for Huntingdon. It appeared in evidence that George and Thomas Whitaker, the father and brother of the plaintiff, Richard Whitaker, were tried for arson before Erle, J., at Cambridge Spring Assizes, 1851, and convicted and sentenced. The commission day of Cambridge Assizes was Wednesday, the 19th of March; the trial of the prisoners commenced on Saturday, the 22nd of March, and terminated on Monday the 24th. By a deed, dated the 17th but not executed till the 20th of March, the prisoner, Thomas Whitaker, assigned his goods to the plaintiff. The corporation of Cambridge claimed the goods for the Crown, as the property of a felon, and employed the defendant to sell them, whereupon the plaintiff brought his action of trover to recover the value of the goods. For the defendant the record of the conviction of Thomas Whitaker was put in evidence, and it was contended that, as in contemplation of law the assizes are of one day, the record, the caption of which bore date of the commission day, must be taken as conclusive evidence that the conviction took place on the 19th of March, and before the assignment. The jury found for the plaintiff, damages 210*l.*; they also found specially that the deed of assignment was *bona fide*, and for a valuable consideration. Leave was reserved for the defendant to move to

(a) Reported by D. T. EVANS, Esq., Barrister-at-Law.

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enter a verdict on the plea of not possessed, if this court should be of opinion that the conviction must be taken as dating on the commission day of the assizes.

A rule *nisi* in those terms having been obtained on a former day by *Prendergast*, Q. C.,

Worlledge and *Burcham* now showed cause.—At the time when the prisoner, Thomas Whitaker, executed this assignment he was competent to perform such an act, because he was not convicted. [WILLIAMS, J.—The point here is, whether by force of law the conviction dates from the first day of the assizes?] Yes. By law, so far as felons' goods are concerned, the title of the Crown relates back only to the day of actual conviction. It was certainly the opinion of Hale, C.J., that even after indictment a prisoner can make a good deed. He says:—"The goods of a person convicted of felony are forfeited to the king; but the relation of the forfeiture refers not to the time of the offence committed, but only to the conviction; and, therefore, an alienation made by the felon *bona fide* and without fraud, between the offence and conviction, is good, and binds, but if fraudulent, then it is avoidable by the stat. 13 Eliz. c. 5:" (1 Hale P. C. 361, 365-367.) This point was well considered in *Perkins v. Bradley* (1 Hare, 219.) In that case it was held by Vice-Chancellor Wigram, that a felon might dispose of his property for a valuable consideration, between the day when the offence was committed and conviction. Take, as an illustration, a case where the assizes extend over a long space of time, as in Yorkshire. The commission opens on Saturday; on Monday, a man *bona fide* sells his goods to an innocent purchaser for valuable consideration; on Tuesday he steals his neighbour's property, is taken at once before the grand jury, who find a true bill against him. Can it in such a case be said that a mere fiction of law is to prevail, and that, therefore, he could not make a good sale of goods on Monday? [MAULE, J.—Those fictions must not be stretched to the extreme limit they will go. It seems absurd to say that an act actually done on the 25th, shall be referred back to the 3rd of March.] There are no cases to be found where a conveyance was made after commission day and before conviction. The cases of *Shaw v. Brand* (Starkie, 319), and one in *Skinner*, 357, are, however, instances of conveyances made very recently before the commission day. Then, as to the question of estoppel, there are numerous authorities to the effect that, where matter of estoppel can be pleaded, it must be relied on: (*Macgrath v. Hardy*, 4 Bing. N. C. 782.) It is admitted that we cannot traverse the record. It is merely by fiction of law that the whole period of commission of oyer and terminer is to be taken as one day. But this court will take judicial notice that assizes may and do continue more than one day. The record of conviction is drawn up by the officer of the court as of the first day of the assizes, and for some purposes, but not necessarily for all, the assizes are treated as of one day. The record may be conclusive as to the fact of conviction, but is not necessarily so as to the date of it. We have no power over the

record so as to enable us to enter continuances. If the adjournments from day to day had been entered as they ought to have been by the officer of the court, we should have been in a better position, but we are not to be prejudiced by his default. The duties on the court as to making proper entries, are laid down in Hale P. C. 24. It is also said in 3 Co. Inst. c. 104, p. 229, on falsifying attainders, "That if the triers find the offender guilty generally, yet the feoffee or lessee, if the offence be alleged in the indictment, before it was done to their prejudice, may falsify in the time, but not for the offence." What principle of justice is there which prohibits the alienee of goods from showing the true day when they were assigned, as well as the true day of conviction? [WILLIAMS, J.—Is that anything more than an authority to this—that the record is an estoppel with respect to those matters which are material and traversable.] According to the argument of the other side, if adjournments are entered the deed is good; if not, it is bad; so that it must depend upon the manner in which the clerk of the court performs his duty in making up the record, whether this assignment is good or bad. There is authority for this, that parties interested may show the true time: (4 Co. c. 7; *Huys v. Wright*, Yelv. 35; *Johnson v. Smith*, 2 Burr. 962.) This last is a case strongly in point. If it was there allowed to show the true day for the furtherance of justice, why should we not here, for the same purpose, be allowed to show the actual day of conviction? (*Morris v. Pugh*, 3 Burr. 1241.) [MAULE, J.—Fictions of law must be consistent with justice.] If the court were to refuse this, a manifest injustice would follow: (*Burnitt v. Isaac*, 10 Price, 124; *Thomas v. Des Anges*, 2 B. & Ad.; *Sadler v. Leigh*, 4 Camp. 195.) It was said by the court in *Doe v. Hersey* (3 Wils. 274), "By fiction of law the whole term, the whole time of the assizes, and the whole session of Parliament may be, and sometimes are, considered as one day, yet the matter of fact shall overturn the fiction in order to do justice between the parties." In *Lyttleton v. Cross* (3 B. & Cr. 317), it is laid down by Abbott, C.J., "That where it is for the interest of the party pleading to show that a proceeding did not take place at the precise time when by fiction of law it is supposed to have happened, it is competent for him to do so:" (*Butler and Baker's case*, 3 Rep. 25.) [WILLIAMS, J.—Is this a question of fiction or relation at all: is not the question whether the record is so drawn as to be an estoppel?] We have shown that an alienee of lands may show the true day. [MAULE, J.—The contention is, that the court will take judicial notice that the legal day of the assizes contains several ordinary days of twenty-four hours.] Yes; and that we may show on which of those days the assignment, and on which the conviction took place.

Prendergast and *O'Malley*, in support of the rule.—The point raised in this case has been decided years ago. There was no evidence before the Court below, nor is there anything now, to show when the prisoner was convicted, except the record of conviction. [MAULE, J.—You say you cannot in such a case prove the time by

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other evidence than the record. That may be so, but was any other evidence tendered? If not, there is no matter of law, but it is a simple question of fact.] We admit that the plaintiff offered to prove that it was subsequent to the execution of the deed that the prisoner was arraigned for the felony. For our case, we put in evidence the formal conviction of the prisoner by producing the record. If the plaintiff could show by other than the record when the conviction actually took place, then we should have no case; but that cannot be done. There was no other evidence before the jury of the conviction, for the plaintiff could not give parol evidence. The rule is clear, that where a person is convicted in a Court of Record, the only evidence of his conviction is the record itself. The cases cited on the other side will be found, on close examination, not to apply. The record states that the conviction took place on a certain day, and evidence cannot be admitted in contradiction, showing it took place on another day: (1 Phillips Ev. 425; *Thomas v. Ansley*, Esp. 10; *Pope v. Foster*, 4 T. R. 490.) That this rule is carried out to a great extent will appear from reference to 2 Hawkins, 179. In the next place the record shows that the prisoner was tried and convicted on the 19th of March, and that entry forms part of the record. Now it has been held that if a record shows that a trial took place on a certain day, it must be taken it was finished on that day. The rule as to one continuous day extends to all sessions, and even to Parliament itself: (*Walker v. Holmes*, 4 T. R. 660; *The Attorney General v. Panter*, 6 Bro. Par. C. 486; *St. Clement Danes v. St. Ann's, Holborn*, 2 Salk. 6; 2 Brook's Abr. 40.) Where a record states a thing as having been done on a particular day, and any other matter relating to it is shown to have taken place after that day, the doctrine of relation applies, and the court will take it as having been done on the day specified in the record. This is stated in 2 Brook's Abr. 197 (Relation, 13; *vide* Charter 25); and this doctrine has been universally acted upon. There is a note in Saunders to the same effect. In *Ludford v. Gretton*, Plowd. 491, it said "that all matters of record in respect of their highness are presumed in themselves to carry absolute truth. And, therefore, none can say that the king's charter was made or delivered at another time than when it bears date, no more than a man may say that a recognizance or statute merchant or staple was acknowledged, or any writ purchased at any other time than when it bears date. For to aver that it was ante-dated, or that it was delivered or acknowledged after the date, tends to the discredit of the Great Seal or of the officer of record." In *Portchester v. Petrie*, 3 Doug. 261, it was held by Lord Mansfield, that where it was admitted on the record that two judgments were given on the same day, priority of judgment could not be averred. Every act of Parliament in which no time is specified for its commencement, is held to take effect from the first day of that session of Parliament wherein it is made. In the next place, matter in pais, though it may have occurred before, will, by relation, be taken to be done

on the day: (*Jacobs v. Miniconi*, 7 T. R. 31; *Greenway v. Fisher*, 7 B. & Cr. 436.) [WILLIAMS, J.—Then you say, that if a shop-keeper in York is convicted on the last day of the assizes, all the goods he has sold during a fortnight since commission day, and all the money he has received for them, is forfeited to the Crown?] Yes; it is almost an universal practice to make such assignments as these before commission day. All the cited cases are within the rule laid down by Lord Mansfield, C.J. in *Portchester v. Petrie* (suprà.) But the case strictly in point here is that from Hale (suprà.) In law, a record is supposed to be a minute of what takes place from time to time in the court; it is not such a trifling thing as the other side would have the court believe. If the plaintiff were permitted to give parol evidence of the day when the prisoner was convicted, it would be admitting parol evidence of the indictment itself. The court should therefore say that the inconvenience which would follow is so great that it cannot be permitted. The old rule goes so far as this, that a mischief shall be preferred to an inconvenience. The general principle that facts shall prevail against fictions of law, is limited to some few cases, and does not affect verdicts and records of superior courts generally: (*Jacobs v. Miniconi*, suprâ.) When the court have before them what the law says is the proper evidence of conviction—that is to say, the record, they are precluded from admitting any other evidence: (*Lant v. Arnaboldi*, 1 Cr. & Jerv. 97; *Rex v. Thurstone*, 1 Lev. 91; *Rex v. Carlisle*, 2 B. & Ad. 362.) This last case very strongly illustrates the force of a record as evidence: (*Rex v. Shaw*, Russ. & Ry. 526.) In the cases cited on the other side, there is not a single instance where evidence was admitted to contradict a record. We are contending for a positive and necessary rule of evidence which must be sustained, or great inconvenience will be occasioned.

MAULE, J.—This case has been argued by the learned counsel on both sides in a very elaborate and learned manner; every authority bearing upon it has been cited; but I do not myself now entertain, nor have I throughout the arguments entertained, any doubt upon the question. This was an action of trover, to which the defendant pleaded, Not possessed. The plaintiff was the assignee under a deed of the goods of a prisoner. It appears that the commission day of Cambridge Spring Assizes was the 19th of March, that the deed of assignment was executed on the 20th, and that the prisoner who so executed the deed was on the 24th tried and convicted of felony. The defendant said by his plea that the goods were not the goods of the prisoner, because he could not convey them by assignment on the day when the deed transferring the property in them was executed. At the trial at Nisi Prius, the jury found, that the deed of assignment was executed *bona fide*, and for a valuable consideration. The record was produced, which showed the conviction as having taken place on the 19th of March, two days previous to the execution of the deed; and it was insisted that this was conclusive against the

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plaintiff. No doubt the plaintiff had a good title, unless it was taken away by the record of conviction prior to the assignment. [His lordship read the record.] The caption of the record of conviction states that the assizes were held on the 19th, but there is no allegation that the trial and conviction took place on that day, so that there is mention of the day when the assizes were held, but none of the day of conviction. If no further evidence was admissible, it must be taken that the conviction was on the 19th, for, so far as the record goes, the assizes begin and finish on that day. If the assizes began and finished on the 19th, then the conviction, as shown by the record, refers only to that day; but, where the assizes extend over several days, as here, the question is, whether you can show that the conviction did not take place on the 19th, but on the 24th. I apprehend that, consistently with true principles of law and every decided case, you can. As far as the record is concerned, the assizes may be regarded as of one day; but that day is a legal day, which may, and often does consist of more than one natural day of twenty-four hours. The legal day may last from the 19th over the 24th, and there is no necessity for entering the adjournments. The court will itself take judicial notice that the assizes are continued from day to day. Therefore, when the record alleges that the assizes were held on the 19th, proof that the trial in point of fact took place on the 24th is no contradiction of the record. The evidence does not show that the trial did not take place on the 19th in the sense in which that term is used in the record. It is no more inconsistent to show that the conviction took place on the 24th than it would be if the record should show on what particular hour of the day a conviction took place. If it were material to show at what particular hour of the 19th the conviction took place, and it certainly might be done, in like manner you may show on what natural day, being part of the legal day, the conviction occurred. Fictions of law are for the furtherance of justice. The principle that evidence is not admissible to contradict a record is one calculated for the advancement of justice; but the ground upon which I feel bound to decide this case seems fully recognised in *Doe v. Hersey*, where it is said, "By fiction of law, the whole term, the whole time of the assizes, and the whole session of Parliament may be, and sometimes are, considered as one day; yet the matter of fact shall overturn the fiction in order to do justice between the parties." Seizure is said to relate to the time when the writ is put into the hands of the sheriff. Some cases have been relied upon as to the beginning of term; but though for some purposes it is held that all term is one day, still that cannot be held for all purposes, because there are within it various return days and the like, and the court knows judicially that it consists of several natural days. In bankruptcy, several acts are said to relate back to some previous day. An act of Parliament (unless the contrary is specified) takes effect from the first day of the session. But those cases do not seem to me applicable to the present. Suppose, as has been

suggested in argument, that in places where assizes last a fortnight or three weeks, a person on bail, say a shopkeeper, is convicted, or that he commits a felony during the assizes, then, according to the argument used on behalf of the defendant, all goods sold by him between the commission day and the day of his trial would be forfeited. Considering that fictions of law are not to prevail against facts, we must hold the plaintiff entitled to recover, for the jury found that the conveyance was *bona fide*, and for a valuable consideration. It is not necessary, for the reasons given, that we should go with minuteness into the cases cited; we think this rule should be discharged.

WILLIAMS, J.—I am quite of the same opinion. Counsel have brought before the court every case bearing upon the subject, and the result of this thorough research into the authorities, as contended by the defendant, would be, that the court is constrained, by an arbitrary rule of law, to say that the conviction, which in point of fact took place on the 24th, was on the 19th of March. I do not think this is so. The conveyance is perfectly good if made before the actual conviction of the person executing it. It is urged that we are compelled by a positive rule of law to say that the conviction took place on the day named in the record. If we did so, it would work injustice in many cases other than this; such, for instance, as where *bona fide* purchasers buy goods, after commission day, of a man convicted of felony before the close of the assizes. The consequences would be so absurd as to make the soundness of the rule doubtful. I agree with my learned brother in thinking that the assizes are to be considered as of one legal day containing natural days; and as the court would be bound to take notice of an hour or fraction of the legal day, so it may take notice that the conviction here took place on one particular natural day within the legal day of the assizes.

Rule discharged.

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SOUTH WALES CIRCUIT.

GLAMORGANSHIRE SUMMER ASSIZES, 1852.

Glamorgan, July 13.

(Before Mr. JUSTICE TALFOURD.)

*Re JOHN MORGAN. (a)**Practice—Opening statement of counsel.*

Semble—Where a prisoner is defended by counsel, and the facts of the crime imputed to him are few and simple, although the practice in some such cases has been for counsel to enter at once on the examination of witnesses, without previously stating the case to the jury, an opening address is, generally speaking, advantageous, and should therefore be made.

W R. GROVE, on the arraignment of the prisoner for stealing oats, hay, &c. where the facts were few and simple, after stating he was instructed to prosecute, asked his lordship whether, in cases where the prisoner is defended by counsel, and the facts are few and simple, his lordship thought that counsel for the prosecution should state the case to the jury previous to calling witnesses?

TALFOURD, J.—Perhaps that is a matter which had better be left to the discretion of counsel, who no doubt will always pay due regard to the public time.

Grove.—An opinion, I believe, was expressed by Mr. Justice Allan Park, that in such instances, counsel ought to open the case to the jury; but Mr. Justice Vaughan Williams, on the last circuit, had ordered a different course, and permitted counsel to enter on the examination of witnesses, without previously addressing the jury on the facts and law of the case.

TALFOURD, J.—On consideration of the question, I agree with Mr. Justice Park. An opening of the case by counsel in such cases is, generally speaking, advantageous, and therefore should be made.

(a) Reported by D. T. EVANS, Esq., Barrister-at-Law.

OXFORD CIRCUIT.

STAFFORDSHIRE SUMMER ASSIZES, 1852.

Stafford, July 26.

(Before Mr. JUSTICE WILLIAMS.)

REG. v. PIERCE AND OTHERS. (a)

Larceny—Property left by passenger in railway carriage—Venue—Statute 7 Geo. 4, c. 64, s. 13—Order for delivery to prisoner of money found on his person.

The law with regard to the finder of lost property does not apply to the case of property of a passenger accidentally left in a railway carriage, and found there by a servant of the company; and such servant is guilty of larceny if, instead of taking it to the station or superior officer, he appropriates it to his own use.

Where the evidence is consistent with the fact of an article having been abstracted from a railway carriage, either in the course of the journey through the county of A. or after its arrival at its ultimate destination in the county of B., and the prisoner is indicted in A. under the statute 7 Geo. 4, c. 64, s. 13, the case must go to the jury, who are to say whether they are satisfied that the larceny was committed in the course of the journey or afterwards.

The judge will not grant an order for the delivery to a prisoner of money found on his person: for

Semble, neither a judge or justice of the peace has power to make such an order.

JAMES PIERCE and Richard Pugh, were indicted for stealing on the 9th of May, 1852, a dressing-case and other articles, the property of the Shrewsbury and Birmingham Railway Company; and in another count, the prisoners, together with John Pugh and Jane Pugh his wife, were charged with feloniously receiving the same articles. In other counts the articles were laid as the property of Henry Cunliffe.

Scotland, and A. S. Hill, for the prosecution:

Huddleston, for the Pughs; Kettle, for Pierce.

After the grand jury had found the bill, and before the trial, *Kettle* made an application to the court for an order directing that some money taken from *Pierce*, and now in the possession of the chief constable, be given up to the prisoner to enable him to pre-

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

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pare for his defence. There was no pretence for saying that the money was connected in any way with the charge.

The application was resisted by the prosecution. A considerable sum, upwards of 13*l.*, had been already given up by order of the committing magistrate, and the chief constable produced an order from the Under Secretary of State for the Home Department, directing that such moneys only, taken from prisoners, were to be given up, as the committing magistrate might order. After some discussion, Williams, J. refused to make the order, as it did not appear what power, on the one hand, a judge or justice of the peace had to make such an order, and, on the other hand, what authority the Secretary of State had to control the right, if it existed.

At the trial the following facts were proved on the part of the prosecution:—The Rev. Henry Cunliffe, on the 9th of May, was a first-class passenger from Shrewsbury to the Shifnal station on the railway. On reaching home he missed a dressing-case, which formed part of his luggage, and was in the carriage with him. Having reported his loss to the railway authorities, inquiries were instituted, and the dressing-case and some of its contents were found in the house of the prisoner Pierce, at Shrewsbury, who was an engineer in the employment of the railway company, and who conducted the train by which Mr. Cunliffe had travelled. Richard Pugh was a stoker in the employment of the company, and he accompanied the train in question with Pierce. The evidence against him consisted in a statement which he made to the police constable, to the effect that he found the dressing-case in a first-class carriage on the arrival of the train at Codsall, one of the stations on the line; and that he carried it to the engine, and gave it to Pierce, who opened it with a wrench, and, on their return to Shrewsbury, gave him some of the articles out of it as his share. A portion of the contents of the dressing-case was found at Shrewsbury, in the house of John Pugh, Richard Pugh's father. Jane Pugh, the mother, was proved to have pawned a gold ring, which also formed a part of the contents of the dressing-case.

The part of the line of railway along which Mr. Cunliffe travelled is in the county of Salop; but the Codsall station, to which the train proceeded after Mr. Cunliffe left it, and where, according to Pugh's statement, the dressing-case was taken from the carriage, is in Staffordshire.

At the close of the case for the prosecution,

Huddleston objected that the indictment was not supported as against Pugh. The larceny, if committed at all, must have been committed in the county of Salop. The statute 7 Geo. 4, c. 64, s. 13, did not apply here. That section enacted that, in "indictments for felonies or misdemeanors committed upon any person, or on or in respect of any property in or upon any coach, cart, or other carriage whatsoever employed in any voyage or journey, upon any navigable river, canal, or inland navigation, the venue may be laid

in any county through which the coach, &c., or vessel shall have passed in the course of the journey or voyage during which the felony or misdemeanor was committed, in the same manner as if it had been actually committed therein." The whole of Mr. Cunliffe's journey was in Shropshire. If the statement of the prisoner Pugh was relied on as evidence of his guilt, it must be taken altogether, and that showed that the larceny was not committed during the journey; for the removal of the dressing-case from the carriage did not constitute the larceny, according to Pugh's statement, but it consisted in the distribution of the property on the arrival at Shrewsbury after the return journey. If so, the offence was not triable in Staffordshire, but in Shropshire.

WILLIAMS, J., thought there was some evidence for the jury, from which they might believe that the dressing-case was abstracted during the journey. The evidence, with the exception of Pugh's statement, was consistent with either supposition, and, therefore, the case must go to the jury.

Huddleston and *Kettle* then addressed the jury for their respective clients. Among other topics, it was urged that, if the prisoners found the dressing-case, without any owner for it, and took it away to take care of it, it was not larceny.

WILLIAMS, J., in summing up, said there was no pretence for treating this as a case of lost property. It was the duty of the prisoners, if they found such an article left by a passenger, to take it to the station-house, or some office of the line. It was absurd to say that this case was analogous to that of the finder of lost property. It was nothing like lost property. With respect to the point raised as to the venue, if the jury thought the evidence of a stealing from the carriage in the course of the journey was not satisfactory, then they must acquit the prisoners Pierce and Pugh of the charge of stealing, and consider what evidence there was against them and the other prisoners of receiving the goods knowing them to have been stolen.

The jury convicted Pierce and Richard Pugh of stealing, and acquitted the other prisoners.

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v.
PIERCE AND
OTHERS.

1852.

Larceny—
Property left in
railway
carriage.

OXFORD CIRCUIT.

MONMOUTHSHIRE SUMMER ASSIZES, 1852.

Monmouth, August 4.

(Before Mr. JUSTICE CRESSWELL.)

REG. v. NICOLAS. (a)

Evidence—Dying declaration—Power to use statement if unobjected to, although inadmissible if objection persisted in.

On a trial for murder it was proved that the deceased, who lived a few hours after the wound was inflicted, made a statement, at the conclusion of which he exclaimed, "Oh, God! I am going fast; I am too far gone to say any more;" but he did not appear to have previously said anything about his condition, and there was no evidence, one way or other, to show that he was aware of it:

Held, that the statement was inadmissible as a dying declaration.

The objection to the statement having been subsequently withdrawn by the prisoner's counsel:

Held, that it might be read in evidence, although not evidence if objected to.

ANDREW NICOLAS was indicted for the wilful murder of Thomas Godfrey, at Newport, on the 27th of May, 1852. Skinner, and E. V. Richards, for the prosecution.

Huddleston for the prisoner.

The prisoner was a native of the Philippine Isles, and at the time of the alleged murder was the cook on board the *Ocean Star*, an American vessel lying in Newport Docks. The deceased was a Swede, and had also formed one of the crew on board the same vessel. It appeared that some ill-feeling existed between the deceased, the prisoner, and the steward, who was a fellow-countryman of the prisoner; and the captain, apprehensive of a disturbance, had, on the morning of the 27th, dismissed the deceased and eleven others of the crew. The deceased went ashore and took lodgings at the house of a person named Corcoran, in Newport. Some fighting took place that night between the deceased and some of the crew; and as the former was standing outside the house about eleven o'clock, a man was seen going down towards the spot with a knife in his hand. He struck at the deceased twice, first hitting him in the arm, and the second time in the side. The night

(a) Reported by J. E. DAVIA, Esq., Barrister-at-Law.

was very dark, and the witness who testified to these circumstances, could not speak as to the identity of the prisoner. The wounded man was carried into Corcoran's, and a surgeon sent for. He died the next morning, having received a wound which perforated the abdomen.

After some circumstantial evidence had been adduced to show that it must have been the prisoner who inflicted the wounds, Samuel Harlow, a police constable, was examined. He said:—I went to Corcoran's about eleven o'clock, and also at two o'clock; on the second occasion he made a statement to me. From appearances, I should judge that he was dying. He was making it about a quarter-of-an-hour. I believe he knew he was dying. I cannot recollect that he said anything about dying before he began his statement. As he finished it he said, "Oh, God! I am going fast; I am too far gone to say any more."

The counsel for the prosecution now proposed to read the statement which the witness had written down.

Huddleston objected, on the ground that there was no evidence to show that Godfrey knew, before he made the statement, that he was dying.

CRESSWELL, J., suggested that it would be better to wait till the surgeon was examined, in order to see whether he could throw any light on the condition of the deceased.

Mr. Limbert, a surgeon, proved that he examined the deceased about half-past eleven at night at Corcoran's, and found him suffering from a wound on the wrist and abdomen. He died the next morning. On a *post mortem* examination, the wound in the abdomen, which penetrated into the stomach, was found to have been the cause of death. The witness had not any conversation with the deceased respecting his condition.

It was now again proposed to have the statement made by the deceased to Harlow, the constable, read in evidence.

CRESSWELL, J., retired to consult *Mr. Justice Williams* sitting at *Nisi Prius*, and on his return said:—My brother *Williams* confirms the doubts I had on this subject; that, it being possible that this man did not discover the extent of his weakness till he had made the statement, and that it was only after he had made it he for the first time discovered that he was going fast, there is not, consequently, that clear ascertainment of his consciousness of his state, before he made it, to render it admissible in evidence.

Huddleston then said that, having had an opportunity of re-considering the subject, he was willing to withdraw the objection to the admissibility of the statement.

Skinner.—The objection having been taken and sustained, and the statement consequently not being legal evidence, he did not see how he could now offer it in evidence; but,

CRESSWELL, J.—There is no difficulty I think, if the objection is withdrawn.

The statement, as taken down by Harlow, was then read, and was to the following effect:—"The cook, steward, and I were

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quarrelling, I knocked the steward down, and he knocked me down, and in about ten minutes the cook came up with something in his hand and stabbed me twice."

Huddleston then addressed the jury.

Verdict, Not guilty.

Evidence—
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Ireland.

COURT OF QUEEN'S BENCH.

(Before the FULL COURT.)

November 8, 9, 10, 1852.

IN THE MATTER OF THE SIX-MILE-BRIDGE INQUISITION.(a)

Practice—Coroner's Inquisition.

Where, on a motion to quash the inquisition of a coroner's jury finding certain persons therein named guilty of wilful murder, the court has, for the purpose of hearing counsel on behalf of the next-of-kin of the deceased, granted a conditional order, the party showing cause is not entitled to begin, but the counsel for the Crown will move to make absolute the order as if moving an original motion on notice.

Though this court may quash an inquisition where a verdict has been found against a person confessedly innocent, yet it will not interfere when there has been any evidence, even though it may be insufficient to warrant the finding of the jury.

THE proceeding and depositions taken before the coroner in this case having been removed into this court by *certiorari* at the instance of the Crown, and the Solicitor General having obtained a conditional order to quash the inquisition, on the ground of being against law and evidence, and not sustained by the evidence recorded on the depositions.

J. D. Fitzgerald, Q. C. (with whom *James Cuffey*), was proceeding to show cause, when

The *Solicitor-General* (with whom *Martley*, Q. C., and *Hayes*, Q. C.) interposed, and submitted that he, on the part of the Crown, was entitled to begin. According to the authority of *Cully's Case* (5 Bar. & Ad. 230,) the court might have made the order *ex parte*. It was in obedience to the expressed opinion and wish of the court, that a conditional order was taken out in the first instance and for the purpose of hearing counsel on behalf of the next-of-kin,

(a) Reported by P. J. M'KENNA, Esq., Barrister-at-Law.

in support of the finding. We are, therefore, in the same position as if we had served a notice of motion to quash the inquisition, and that motion now came on to be heard. We served a regular notice that we would move to make absolute the conditional order.

Fitzgerald, Q. C.—There was no necessity to serve a notice to make absolute this conditional order, as we filed no affidavit, and there would be therefore no cause if we did not appear here against the order. It is a well-settled rule that the party showing cause has a right to commence. We served notice on the Crown that we would show cause.

LEFROY, C.J.—When Mr. Attorney-General applied to the court in this case, we merely considered whether or not we should hear the motion *ex parte*. We stopped the Attorney-General when he was about going into the facts of the case, and we confined him specially to the question, as to whether there should be notice given of the application, and if so, to whom. It was considered desirable to have the persons interested before the court, we therefore decided that the motion should stand over for that purpose. If the Attorney-General had given notice of his motion, there could be no doubt about his being entitled to move this and begin. Can it be said, then, because the order is taken out and notice given in this form, that the Crown is to be deprived of its right?

Fitzgerald—It is a well-settled point of practice, that the party showing cause is entitled to begin, we therefore respectfully insist on our right?

LEFROY, C. J.—Do you contend that if the Attorney-General had served notice of this motion you would be entitled to begin?

Fitzgerald—No; but as the Crown has chosen to take a conditional order it must abide the consequences.

LEFROY, C. J.—It is merely *ex gratia* that the next-of-kin are represented here, and they have no right to insist on anything of this kind.

PERRIN, J.—This now comes on as if it were to be argued on books. If the usual course of proceeding on this writ of *certiorari* was followed, the Crown would have a right to begin.

MOORE, J.—Besides, it would be very inconvenient to hear counsel against the conditional order, without knowing the grounds on which it is sought to quash the inquisition.

The Solicitor-General.—Those depositions, taken before the coroner, may be removed into this court along with the inquisition, and will be looked into by the court: (Roll. Abr. tit. "Coroner," 2 Haw. Pl. Cr. c. 9, s. 21; 2 Hale P. C. 65; Fitzherbert's Nat. Brev. 554.)

According to the depositions, it appeared that there was a general election for the county of Clare, on the 22nd of July last, and that a number of voters of one of the candidates were kept locked up in a house, against their wish, to prevent them from voting. In consequence of this, a requisition, signed by four

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magistrates, was addressed to the commanding officer of the district, asking for an escort to get these voters and conduct them safely to the voting place. Accordingly, an escort was granted, who went to the house at Thomond Bridge in Limerick, where the voters were. After some delay, and threatening to break in the door, the key was got and the men liberated. The party of voters, accompanied by the military, then placed themselves on long cars for the purpose of being conducted to Six-Mile-Bridge, the polling place for these voters. On approaching the village of Six-Mile-Bridge, Captain Eagar, who commanded the escort (41 men), observing the whole street which led to the court-house blocked up with people, and being informed that he might reach the court-house where the votes were taken, by a by-way, and a lane which came into the village along one side of the court house, turned into this narrow way, when the attack was made on the troops. These facts show that the soldiers were acting for a lawful purpose and under lawful authority, and that they did everything in their power to avoid a collision. After passing into the lane, it appeared from the evidence of constable Boyce, that the crowd followed the troops and voters, shouting and hooting, and throwing stones, and that a man in the crowd cried out, "Come, boys, here are the voters, don't let them pass." Another constable stated the Rev. Mr. Clune, a Roman Catholic clergyman, called out to the excited mob, "They are bringing voters here on cars, and you are standing by idle;" and was urging them to stop the voters. A magistrate, named Studdart, deposed that the same reverend gentleman cried out, "Shame, boys, shame; is there a man amongst you? here are the voters coming." Another magistrate, Mr. Gabbett, having heard the firing, went out and found a soldier lying on the ground, and people pelting him with stones. This showed that there was a plot to take the voters by force from the military. A voter named Mulqueen, who was on one of the vans, swore that he heard one of the mob crying out, "There are Keane's voters, let us take them away;" and that immediately after this the mob rushed on the escort. That he saw a soldier struck in the face by a stone, and covered with blood. The driver of one of the vans (Corrigan) deposed that a man came up and cut his reins, and was about cutting the traces, until he was driven away by one of the soldiers. At this time, and before a single shot had been fired, there was a great deal of stone throwing, and several soldiers had been knocked down. Another witness, one of the drivers, named Neville, had his car broken, and he stated that he saw a soldier knocked down, and struck with a brick while down, before the firing commenced, and that the first soldier fired in the air. From the evidence of Captain Eagar and Lieutenant Hutton, the officers commanding the escort, it appeared that, when they turned into the lane, the soldiers were ordered to alight, and were formed in divisions, proceeding behind and along the sides of the vehicles containing the voters. Captain Eagar said that he considered that soldiers were justified in firing in self-defence without

waiting for commands; that they should try the bayonet first, however. A gentleman of the name of Waller, a magistrate, stated that a Roman Catholic clergyman, Mr. Burke, had said that the voters were guarded like convicts; that he (Waller) had been knocked down by a stone, and when he got up, that he found the mob and military engaged in a hand-to-hand *mêlée*, and that in his opinion, before the firing began, life was in danger. As regarded Mr. Delmege, who was accused of firing a pistol on the people, and ordering the soldiers to fire; he stated that he saw no pistols with him until evening, and that he saw him then drawing the charge from them, and that they were perfectly clean. There were six persons deceased. The evidence of identity has not been such as would warrant a jury in convicting persons accused of petty larceny. The only evidence is that of Mr. Cronin, resident magistrate. He states merely that the men having been mustered after the affair was over, he was accompanied by Captain Eagar and Mr. Delmege, to ascertain who had fired. That he had placed his finger in the barrel of each gun, and when he found it soiled, without cautioning the men, he had asked them if they had fired; that they had admitted doing so, and admitted their names, which he took down at the time. This finding is absurd, for all of the traversers are found guilty of the murder of each one of the deceased persons, and there is not the least evidence that any one man fired a shot that took effect. Mr. Cronin was not able to identify any one of the soldiers, and he changed two names at the suggestion of Captain Eagar, in this way: Captain Eagar said there was no such name as West in the company; that there was a man named Weston, and accordingly that name was substituted for the first. He then said there was no such man as Williams whatever, and this name was changed to Whitbread. There is an order on the rolls of this court, in which the court struck out part of the finding of a coroner's jury, in the case of Dr. Harty; the case is not reported. The following is, however, the entry in the Crown book:

"In the matter of an inquest on the body of William Osprey, 23rd November, 1844,

"This case called on, when Mr. Close, on the part of William Harty, Esq., M.D., physician to said Marshalsea, submits that the finding of the coroner and jury in this matter be quashed, in so far as relates to the introduction of irrelevant matter, reflecting on the said Doctor Harty; whereupon, and on inspection of said inquiries and depositions thereat, it is considered and adjudged that in so far same be quashed as desired."

A good finding on the fact of it was quashed in *R. v. Bonny*, Carthrew, 72. There must be premises for the jury to find on, and if not, the court ought to quash the inquisition: (1 Bac. Abr. tit. "Coroner;" Ventris, 352; *Barclay's Case*, Siderfin's Rep.; *R. v. Stukely*, 12 Mod.; *R. v. Parker*, 2 Levinz; *R. v. —*, 3 Mod. 81; 5 Com. Dig. G. 12, tit. "Officer;" *Re Cully*, 5 B. & Ad. 230.) The court will interfere if the coroner practice. If the facts

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stated in the depositions were on the face of the inquisition, there could be no doubt about the power of the court: (*Re John L. Daws*, 8 Ad. & El. 936; *R. v. Mills*, 4 Nev. & Man.) In *Dr. Harty's Case*, the court looked into the depositions. During the year of the famine here, a jury sitting on a person who had died of hunger, found a verdict of murder against Lord John Russell. Can it be said these absurd findings are to stand?

J. D. Fitzgerald, Q. C.—This order has been obtained on the grounds of the verdict being against law and the weight of evidence. The court is not to weigh the evidence, but to see whether or not there has been any evidence to warrant the finding. The facts gone into by the Solicitor-General had been the case for the defence of the prisoners on the inquest. As to the facts of the case, there was first a controversy as to whether or not the voters were going of their own free will to the polling place. All agreed that there had been no disturbance of any kind until the procession of voters, with the escort, reached Six-Mile Bridge; and at one time, when there appeared a tendency to excitement in that village, a gentleman whose evidence was unimpeachable, Mr. Wilson, induced the people to give up their sticks to the police; there was, moreover, when the firing commenced, a company of the 14th regiment at the court-house, for the purpose of preserving order. A man named Canny deposed that he saw the soldiers load at Thomond Gate, by order of Mr. Delmege, with whom he saw a pistol; that he heard Mr. Delmege say to a man in the crowd, who was muttering something, "You had better be quiet, my lad, or if you don't, I shall give you the contents of this. You have had your election ways; it is time that we should have ours, or we shall have blood for it." This was contradicted, it is true, but it is to be assumed that the jury believed this man. A man named Tierney, who was driving one of the long cars on which the military were, heard one of the soldiers saying that he wished they would get some provocation to discharge their pieces, before they would have to draw them; or words to that effect. Another respectable witness swore that he was sitting on one of the side walls of the lane when the shots were fired; that he saw from twenty to five-and-twenty people in the lane; that there was no appearance of tumult, nor any attempt made to attack the military. Everybody was running to see them; that he heard no angry word spoken, and saw neither sticks nor stones, but did not see the rear of the procession. That a man name Casey was standing on the ground between witness's feet, and was shot dead without ever having stirred. That after the first shots he had heard a man cry out, "continue the firing—fire front and rere." Another witness stated that he saw Mr. Delmege fire his pistol and give the word to fire. Mr. Wilson, a magistrate and a gentleman who had been in the army, deposed that he saw one soldier come out of the lane and fire in the direction of a house on the opposite side; and a young man run round the corner of the lane pursued by three soldiers stabbing at him; and that, in his opinion, the conduct of the mili-

tary was unsoldierlike and inhuman. A constable named Maher deposed that there were several shots fired in the open square, opposite the Court-house, by soldiers pursuing people running out of the lane. It is true that there is a conflict of evidence, but still there is enough to warrant the finding of wilful murder by the jury. The soldiers, instead of acting in conformity with the rules for the guidance of soldiers in riots, had violated them. The 14th rule required that the firing was to cease the moment it became unnecessary. The law infers malice from a deliberate act, or when there is no considerable provocation. The evidence as to the identity was not as satisfactory as it might be, but there has been no assistance given by the authorities to the next-of-kin in identifying those who had fired. Mr. Cronin, the resident magistrate, immediately after the firing examined the muskets of the men, and, when he found they had been recently discharged, he took down their names to the number of ten. The two men whose names had been altered, had been acquitted by the jury. The court ought not to interfere under any circumstances. The coroners were not bound to take the evidence in the shape of a deposition. They are merely to rectify the inquisition and evidence thereon (1 & 2 Phil. & M., c. 18, s. 2), and this was for the purpose of the trial, not to have the depositions in the shape of a record. In magistrates' cases, the court merely decided as to the legality of documents, or as to excess of jurisdiction: (*R. v. Kinneard*, 1 Bro. & Bing.; *R. v. Bolton*, 1 Q. B. Rep. 71.) Quashing the inquisition would prejudice the trial of the case after this court expressing an opinion.

Sir Colman O'Loughlen, Q.C., for the next-of-kin in the Limerick case.—If this verdict did any injustice in the opinion of the court, the remedy was to admit the accused to bail. The court will look into the depositions for this purpose only: (*R. v. Dalton*, 2 Strange, 911.)

Martley, Q. C., replied.—If the soldiers were assembled for an unlawful purpose, and one of them committed a murder in pursuance of that unlawful purpose, they would be guilty; but it was beyond all question that the soldiers were acting for a lawful purpose under lawful authority. The court should look into the depositions, and if the evidence is insufficient to warrant the finding of the jury, quash the inquisition. In *R. v. Jones and Bick*, 1 Cox Crim. Cas., an inquisition was quashed for uncertainty.

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JUDGMENT.—November 23.

LEFROY, C. J., delivered the judgment of the court.—This case comes before us on a motion to quash several inquisitions finding verdicts of wilful murder against the several persons therein mentioned. It is grounded, not upon any defect in form or substance apparent on the face of the inquisition, nor upon any alleged misconduct of the coroner, but on an allegation of the insufficiency of the evidence returned by the coroner to support the finding of

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the jury. Counsel on behalf of the next-of-kin of some of the deceased have been heard on the motion, and now the important question for our decision is, whether it is competent for the court to enter upon such an inquiry, and to quash an inquisition on the ground suggested? The arguments in this case on both sides have displayed great ability and research. Cases have been found which may seem to furnish an analogy, and which have been relied on for the purpose. Some of these establish the undoubted right of the court to look into the depositions, and to this effect are the cases of *R. v. Dalton* (2 Strange, 911), and the MS. note by the editor of a case before Lord Mansfield, in which he held that the depositions, and not the inquisition, were to guide the discretion of the court as to admitting to bail; to which may be added the case of *R. v. Magrath* (2 Strange, 1241.) There is, then, besides these cases, the strong dictum in the case of *R. v. Hethersole* (3 Mod. 80), in which the court is reported to have said:—"If you can produce an affidavit that the jury did not go according to the evidence, we will grant the application to quash the inquisition." Strong arguments have also been urged as to the convenience and even the necessity for the existence of such a jurisdiction in this court to protect those who are confessedly innocent. No reported case, however, has been found, and neither in this country, nor upon a search in the Crown Office in England, has there been any instance where such a jurisdiction has actually been exercised by an order to quash the inquisition on account of the insufficiency of the evidence to support the finding. Under the circumstances, having no precedent for our guidance, we are bound to consider maturely the consequence of complying with such an application, and we do so not only in respect to the individuals concerned on each side, but also as regards the interests of public justice, and the due administration of the law. In the first place, if we are to review this mass of evidence for the purpose of controlling the finding of the jury, what a task have we to engage in to judge of its effect upon paper without the advantage of observing or knowing anything of the demeanor of the witnesses, which so often proves the best test of their credit. But supposing this difficulty out of the way, what must be the result of a decision one way or the other founded on our forming and expressing an opinion on the sufficiency or insufficiency of the evidence to support the finding. It is admitted that our decision, if given to quash the inquisition, would not prevent a bill being sent up to the grand inquest of the country. If so, can it be conceived that such a bill would come before them unprejudiced by the deliberate, nay more, the authoritative opinion of this high tribunal, announcing that the evidence was not sufficient to sustain the finding of the inquest. On the other hand, supposing us to decide that there is evidence to warrant such a finding, would the traversers, when arraigned on this inquisition, go to trial unprejudiced by our decision, finding that the evidence was sufficient, which would be somewhat of a warrant to the petty jury to confirm the finding of the inquisition?

Are we, then, in the absence of all precedent, to disregard or encounter all these difficulties. We do not feel that we can, and, therefore, without expressing any opinion whatever on the merits of the finding, or on the sufficiency or insufficiency of the evidence to sustain it, we say "no rule on this motion."

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[NOTE.—On inquiry in the Crown Office, the practice in such cases as this, has been, when the writ of *certiorari* was returned, to obtain an *ex parte* order to set the case down in the crown list for argument, books for the judges to be made up according to the usual course of the court, and each party to join in the expense thereof within four days after the service of the order on the parties interested.—REPORTER.]

OXFORD CIRCUIT.

STAFFORDSHIRE SUMMER ASSIZES, 1852.

Stafford, July 28.

(Before Mr. JUSTICE CRESSWELL.)

REG. v. WHITEHOUSE AND ANOTHER. (a)

Conspiracy to defraud of houses—Evidence of possession.

In support of an indictment charging the defendants with a conspiracy to defraud and deprive B. of certain leasehold messuages, whereof the said B. was lawfully possessed, and to cheat and defraud her of the rents and profits of the said messuages; the evidence as to B.'s title was, that F., before her death, directed S. her next-of-kin, to convey the messuages to B. on account of a supposed equitable claim of B. to money received by F. S., after the death of F., and before administration, executed an agreement to assign to B., and went with her to the houses, and pointed out the property, and said B. was landlady, and he hoped the tenants would not shuffle with her as they had with F. B. afterwards received a small sum as rent. There was no proof that F. or S. were ever in possession, and no other evidence of B.'s title.

Held, that there was some evidence of a possession by B. to support the averment in the indictment.

THE defendants, Isaac Whitehouse and James Tench, were indicted for conspiracy.

The 1st count of the indictment alleged that the defendants, intending to defraud one Margaret Barbara Beard, and to molest and disturb her in the peaceable possession and quiet enjoyment of her property, and goods and chattels, on the 1st day of May,

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

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1850, did conspire, &c. by divers false pretences, and subtle means and devices, falsely, unlawfully and fraudulently, to cheat, deprive and defraud the said Margaret Barbara Beard of certain leasehold tenements and messuages, to wit, sixteen leasehold messuages situate and being in Smallbrook Street, in the town of Birmingham, in the county of Stafford, and called the Inkleys, and of certain lands, houses, and messuages situate and being in the parish of Tipton, in the county of Stafford, and to which the said Margaret Barbara Beard then laid claim and title, and was entitled, and of certain deeds, documents of title, and other papers, writings and certificates, then of and belonging to the said Margaret Barbara Beard, and in her possession, and used by her, and necessary for the purpose of establishing her said claim and title, which the said Isaac Whitehouse and James Tench then well knew, and to acquire and obtain the same for themselves. The count then proceeded to allege as overt acts, that whilst the said Margaret Barbara Beard was lawfully and rightfully in possession of the said deeds, documents and papers, writings and certificates, to wit, on the 1st day of May, 1850, the defendants, in pursuance of the conspiracy, by false pretences, to wit, the pretences of aiding and assisting the said Margaret Barbara Beard to acquire and obtain her said property, to wit, the said messuages, &c. and that it was necessary for them to have the said deeds, documents, papers and writings for that purpose, procured the said deeds, documents and papers, writings and certificates, of and from the said Margaret Barbara Beard. And further, that whilst the said Margaret Barbara Beard laid claim and title, and was entitled to the said messuages at Birmingham, to wit, on the 1st day of November, 1850, the defendants, in pursuance of the conspiracy, caused and procured to be given and administered to, and to be drunken by, and gave and administered to one William Francis Shaw, then administrator of the estate and effects of one Sarah Francis, who died possessed of the said messuages at Birmingham, certain intoxicating liquors and drugs, and then caused and procured the said William Francis Shaw thereby to become intoxicated and incapable of understanding what he was doing, and then caused and procured the said William Francis Shaw, whilst in such state and condition, to sign and seal certain deeds, papers, documents, mortgages and conveyances; to wit, a certain deed purporting to convey the said messuages to the said Isaac Whitehouse, and a certain other deed purporting to be a mortgage of the said messuages to the said Isaac Whitehouse, the contents of which said several deeds and documents were then unknown to the said William Francis Shaw, by reason of his then being so intoxicated, and that the defendants then took possession of the said deeds and documents, and gave the sum of thirty pounds to the said William Francis Shaw, in consideration of his so sealing and signing the said several deeds, which said sum was a sum very far below the value of the said messuages; and the defendants then procured the said William Francis Shaw to give to the said

James Tench the sum of eight pounds for his services in drawing up the said several deeds, and in and about transacting the said matter; and further, that the said defendants on the day and year aforesaid, in further pursuance of the said conspiracy, &c. entered upon the said messuages, and took and have taken the rents and profits and kept possession thereof from the time last aforesaid, hitherto; to the great damage, &c.

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The indictment contained eleven other counts, varying the charge, of which the fourth is the only one material to be noticed here. That count alleged that the defendants on the 1st day of November, 1850, conspired together by divers false pretences and subtle means and devices, to cheat, defraud and deprive, and oust out of possession, a certain person, to wit, one Margaret Barbara Beard, of certain messuages, to wit, sixteen messuages, situate in the town of Birmingham in the county of Warwick, and whereof the said Margaret Barbara Beard was then lawfully possessed, and to cheat, deprive and defraud the said Margaret Barbara Beard of certain rents and profits arising from and out of the said messuages, and to acquire and obtain to themselves the said defendants, the said messuages, and the said rents and profits; to the great damage, &c.

The bill of indictment was originally found at the Staffordshire Quarter Sessions, and was subsequently, on the application of the defendants, removed by *certiorari* into the Queen's Bench. It was tried before Mr. Justice Wightman, at the Staffordshire Spring Assizes, 1852, when the defendants were convicted. A rule for a new trial was afterwards obtained and made absolute, and accordingly the case now came on for trial a second time.

The case, on the part of the prosecution was, that a Mrs. Francis made a statement before her death in 1850, to the effect that her husband had wrongfully obtained two sums of 500*l.* each, left under the will of one Catherine Hickins; and Margaret Barbara Beard, the prosecutrix, the widow of Daniel Beard, a jeweller of Birmingham, being equitably entitled to those two sums, Mrs. Francis requested William Francis Shaw, her grandson, who subsequently took out letters of administration to his grandmother's effects, to assign the leasehold messuages in Birmingham to Mrs. Beard. Previous to Mrs. Francis's death, the prosecutrix took some steps to get either the money alleged to be due to her or the property at Birmingham, and she also laid claim to other property at Tipton, but under different circumstances. Her claims made her somewhat notorious; and the defendant Whitehouse, who kept a public house at Tipton, proffered his assistance in the matter, and subsequently introduced her to the other defendant, Tench, who had formerly been an attorney. Whitehouse paid a sovereign for her, to obtain some documents then in the hands of a third party, namely, a copy of the will of Catherine Hickins, a pedigree, and a copy of a private act of Parliament. Tench accompanied her to call on Mrs. Francis, who upon that occasion told Tench that she had received moneys due to the husband of the prosecutrix, and

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handed over to Tench some papers relating to the transaction. On the 31st of August, 1850, soon after Mrs. Francis's death, William Francis Shaw came to the house of the prosecutrix, and an agreement for an assignment of the Birmingham property was drawn up and executed by Shaw to the prosecutrix, under the eye of the defendants. Shaw, Tench, and the prosecutrix then went to Birmingham, and what took place there was described in the following words by the prosecutrix: "Shaw took me round the premises, and said I was landlady. He told the tenants he hoped they would not shuffle with me as they had with his grandmother. One of the tenants, Mary Malin, paid me two shillings rent then. I afterwards received rents by the hands of the defendant Whitehouse, to the amount of 3*l.* 12*s.* in the whole. He had advanced me 26*l.*, and he retained the rents to pay himself. In December, 1850, I applied to him for more money, but he refused, and wanted me to agree to a sale of the property. I agreed that one-half of it should be sold for 350*l.*, or the whole for 700*l.* I was preparing at the defendant Whitehouse's to attend the sale, but he said I ought not to do so, as I had appointed him my agent. He used violent language to prevent my going. He is now in possession of the property. He and Oswald Tench, a son of the other defendant, have received the rents since."

Thomas Norton, a surveyor at Birmingham, stated that he received authority from Whitehouse to receive the rents. He told the witness that he was acting for Mrs. Beard. In consequence of the expense of ejectments, repairs, &c., there was no money to pay over, the property producing only about 6*l.* or 7*l.* a-year instead of 11*l.* The instructions to the witness were sometimes from Shaw and Whitehouse jointly. Whitehouse told him that if he could get a customer for the property at 400*l.* he would give him 100*l.* out of it. The property was put up for sale, but not sold, but Whitehouse told the witness it was sold privately at the door of the inn for 215*l.*, to a person named Twist. The witness deposed to a conversation between the two defendants, in which they said they would try and get Shaw to their house, and with a glass or two of liquor he would do anything. When in September or October, 1850, the witness told Whitehouse that the tenants were inquiring for Mrs. Beard, and wondered why she did not come for the rents, he replied, "You must not know anything about Mrs. Beard," adding some opprobrious language respecting her.

Another witness, who had lent Mrs. Beard some money, stated that the defendants came to her, and asked her if she could not have Mrs. Beard taken up for obtaining money by false pretences, and Whitehouse's wife said, in Tench's presence, she would give any money in reason, if the witness would throw the prosecutrix into prison to blacken her character, upon which Tench said, "Never mind, I'll make you all right." The agreement by William Francis Shaw, to assign the property was put in. It recited an agreement by Mrs. Francis to assign, and that Shaw had taken out

letters of administration to her estate. The letters of administration were produced by the defendants (after notice to that effect), and they bore date in September, 1850.

At the close of the case for the prosecution,

Allen, Serjt., objected that there was no evidence of any conspiracy between the defendants, applicable to any one of the twelve counts of the indictment; and also that there was no proof that the prosecutrix was entitled to the property, to defraud her of which the defendants were indicted.

CRESSWELL, J.—The evidence is certainly a little defective with regard to the title. [After going through the counts of the indictment, his lordship said:] The counts and parts of counts relating to property at Tipton fail, of course, so also all that relate to a conspiracy in respect of Shaw. The fourth is, I think, the count to which the evidence applies. That count charges a conspiracy to defraud and oust out of possession of the prosecutrix certain messuages at Birmingham, whereof she was then lawfully possessed, and to defraud her of the rents and profits arising from the said messuages, and to acquire to themselves the said messuages, rents and profits. This is the count to which it appears to me the case must be confined.

A. W. Hoggins, for the prosecution, assented, remarking that this was the view taken by Mr. Justice Wightman on the former trial.

Allen, Serjt.—Confining the issue to the fourth count, what evidence is there of conspiracy? There was nothing to implicate the defendant Tench.

CRESSWELL, J.—I think whatever was done, was done by both. The acts are done in concert. The question is, whether the object of those acts was to cheat and defraud? I cannot withdraw the case from the jury in that respect. There is one point, however, already mentioned, on which I have a doubt. I have great doubt as to any of the parties talked of being entitled. The evidence, as it at present stands, is, that Mrs. Francis desired her grandson to convey the property to Mrs. Beard, but there is no evidence that Mrs. Francis was in receipt of the rents. There is nothing that can be strictly called evidence of title, not even of a tenancy at will. But I think there is some very slender evidence to go to the jury on the fourth count, although it is very difficult to decide between little and nothing. Mrs. Beard says, "Shaw took me round and said I was landlady; one of the tenants paid me two shillings. The tenants were told not to shuffle with me as they had done with Shaw's grandmother. I received 3*l.* 12*s.* from Whitehouse for rent." That amounts to an assertion that the rent was received for her; and then Shaw agrees to assign to her, and if the party to whom a conveyance is made is in possession, the presumption is that the conveyor had title.

Allen, Serjt.—The letters of administration to Shaw were granted in September, 1850, but these acts were done in August.

CRESSWELL, J.—That does not signify.

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Allen, Serjt., then proceeded to address the jury for the defendant, and called evidence to rebut the case for the prosecution.

Verdict, Not guilty.

A. W. Hoggins and Chandos Pole, for the prosecution.

Allen, Serjt., and *Rupert Kettle*, for the defendants.

OXFORD CIRCUIT.

STAFFORDSHIRE SUMMER ASSIZES, 1852.

Stafford, July 29.

(Before Mr. JUSTICE CRESSWELL.)

REG. v. READ. (a)

*Conspiracy to cheat and defraud, by the sale of unsound horses—
Evidence.*

On an indictment against A., B., C., D., E., F., G., and H., for conspiracy to cheat M. by selling a glandered horse as a sound horse, the evidence was, that A. having previously cheated M. by selling him a kicking horse, the defendants B., C., D., and E., obtained that horse from M. in exchange for a glandered horse, which he subsequently sold. A., accompanied by G., afterwards sold M. another horse, in which transaction the latter was again defrauded. Some evidence was given to show that A. was frequently in company with some of the other defendants, and that he was aware of a previous sale of the glandered horse by them, but there was no other evidence to connect him with its sale to M.

Held, that in the absence of any evidence clearly leading to the conclusion that A. was a party to that sale, there was no evidence of a conspiracy to go to the jury against him.

JOSIAH READ, together with George Tagg, Richard James, William James, Samuel Bould, Samuel Broughton, Charles Challinor, otherwise Charles Chawner, otherwise Charles Brown, and Thomas Hughes, were indicted for conspiracy to defraud, and for obtaining money by false pretences. The indictment contained twelve counts. The first count charged the defendants with obtaining a horse from William Mellor, by falsely pretending that a glandered mare was sound. The other counts were for conspiracy,

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

and charged the defendants with conspiring to defraud Mellor, by putting off and representing unsound horses as sound.

All the defendants, with the exception of Josiah Read and William James, were tried at the Spring Assizes, before Mr. Baron Platt, when some of them were convicted and others acquitted. The defendant Read, had not surrendered at that time, but having now done so, was put on his trial alone.

The evidence of the prosecutor, William Mellor, was, that some time previously to November 1851, he brought a black mare from the defendant Read, who was a horse dealer, and kept a public-house at Newcastle-under-Lyne. The defendants, Tagg, Richard James, Bould and Hughes, were present. It turned out a kicker. She broke a window three days after he purchased her. Bould and Hughes subsequently came to the prosecutor at Burslem, and told him the black mare would kill him if he kept her, and they knew where there was a good honest mare likely to suit him. They applied to him several times about her. On the 23rd of November, the prosecutor went with them to the Hare and Hounds public-house, in Newcastle, kept by Richard James. Tagg came in while they were there. James brought a bay mare out, and he and Tagg said it was a good honest mare. They treated the prosecutor to some rum. Tagg offered him 2*l.* to exchange the black mare for the bay, and the bargain was struck. In a few hours the prosecutor found the bay mare was glandered, and he took her back to Tagg and James, at Newcastle. They laughed, and said it was a cold. The prosecutor said he must call on Tagg for the black mare or its worth. He said he had sold it. The prosecutor afterwards agreed to take 2*l.* for the bay. On the 12th of December, Read, Challinor, and others, brought him another black mare. Read said she was a very good one and would get some money together. The prosecutor gave one of his own horses in exchange. On trying the mare, he found she could not do any work, being very ill and broken-winded. He afterwards returned her to Read, but received no compensation from him or any one else. Evidence was then adduced, showing that the bay mare purchased by the prosecutor from Tagg on the 23rd of November, was in the possession of the defendant, Samuel Broughton, on the 17th of October previous, and that she was then glandered. The mare was hired on that day for a journey, and was put up at Read's public-house. Read came out and asked if that was not Broughton's mare, and seeing the state she was in, said it was a great pity. It was also proved that at the latter end of October, William James, Broughton and Challinor, sold a mare to a person of the name of Ryder, for a horse of his and 2*l.* in money. Read was not present at the transaction, but in half an hour afterwards he took away the horse sold by Ryder. In a short time, Ryder discovered that the mare was glandered, and returned it to William James, who said, when Broughton came, Ryder should have his horse back again. Broughton did not come, and James afterwards said that Broughton had sold the horse, and

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it was seen a few days afterwards in Tagg's possession in Newcastle fair. Some evidence was given to prove the identity of the mare sold to Ryder, with that subsequently sold to the prosecutor on the 23rd of November. Witnesses were then examined to prove Read's connexion with the sale of an unsound horse to William Cole, several months before, and another to Luke Lawton, in May 1851, but there was no evidence to connect any of the other defendants with these transactions.

Thomas Blood, a superintendent of police, stated that Read was in the habit of attending fairs, and was frequently in the company of the two James's.

The case for the prosecution having closed,

CRESSWELL, J. said, the charge of conspiracy against Read failed. The evidence merely throws a discredit on him as a dealer. The first count charges the defendants with a false pretence, by putting off a glandered horse as a sound one. That will not do, as against Read. The other counts are for conspiracy, but in truth the whole twelve counts are the result of one transaction, and I do not think there is enough evidence to leave to the jury to form any opinion upon. The defendants are low dealers, and Mellor, the prosecutor, bought a black mare from Read, and was no doubt cheated by him. Then Tagg, being the owner of a glandered mare, and Richard James, the keeper of a public house, take advantage of the circumstance, and tell Mellor he has bought a kicking mare, and they get it from him, imposing the glandered mare on him in exchange. That is the conspiracy charged and proved, and on which some of the parties were properly convicted. It is true it is not necessary to prove that all the parties met together. If any evidence or circumstance had been adduced, safely leading to the conviction that Read was a party although absent, that would do. But all that has been done, is to raise a suspicion that from having cheated twice, he entered into the other conspiracy.

Verdict, Not guilty.

Kenealey and Hunt, for the prosecution.

P. M'Mahon, for the defendants.

OXFORD CIRCUIT.

OXFORD SUMMER ASSIZES, 1852.

July 16.

(Before Mr. JUSTICE CRESSWELL.)

REG. v. NOON. (a)

Murder—Manslaughter and misadventure—Definition of ‘malice aforethought’—Words no provocation in law.

If a blow without provocation is wilfully inflicted, the law infers that it was done with malice aforethought, and if death ensues, the offender is guilty of murder, although the blow may have been given in a moment of passion.

Irritating language by the deceased forms no provocation in law, so as to reduce the crime to manslaughter.

The prisoner was indicted for the murder of his wife, and it appeared that on his return home late at night drunk, the deceased made use of some taunting language to him, upon which he took down a sword from the shelf, and unsheathed it, and struck her with the flat part of it, and she then attempted to reach the door of the room through which her daughter, who was on the outside, endeavoured to pull her, the prisoner following her. She immediately afterwards screamed, and on being pulled out of the room by her child, a wound on the left side was observed, of which she died in a few hours. The defence was, that the deceased in resisting the efforts of her daughter to remove her from the room, fell back on the sword, which the prisoner was too much intoxicated to know was unsheathed. Cresswell, J. directed the jury, that if the prisoner used the weapon wilfully, that was such malice aforethought as the law required, and he was guilty of murder; but if the deceased rushed on the sword accidentally, he must be acquitted altogether, and if the wound was inflicted in a struggle at the door, the prisoner having the sword in his hand, but without any intention on his part, to use it, then there was a careless use of the sword, which made him guilty of manslaughter.

ELIJAH NOON was indicted for the murder of Charlotte Noon, his wife, at Oxford, on the 2nd of May, 1852.

The facts of the case appeared from the evidence of the prisoner's daughter, a little girl, twelve years of age. She stated that in consequence of her father not returning home on Saturday night the 2nd of May, her mother went to look for him soon after

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

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midnight. They returned together in a few minutes; he was not sober. Her mother upbraided him with staying out so late. He took some money out of his pocket and counted it. She said he could treat other persons and not her. He then took down a sword from the shelf, pulled it out of the sheath, and struck the deceased who was sitting down, on the back with the flat part of the sword. The child ran to the door and got outside; the mother got up and attempted to follow her, and her daughter took hold of her hand to pull her through. The father was standing in the room, and according to the child's first account, he went to his wife at the door, with the sword, and ran it into her left side. It appeared however that the witness could not see the actual thrust; but her mother screaming, the child pulled her out of the room into the street, where she fell down. She was then led to a neighbour's, and was subsequently taken back to her own house. The prisoner had in the meantime replaced the sword in its sheath on the shelf. On examination, a wound nine inches long was found in the left side of the deceased, of which she died in about twenty-four hours. The prisoner paid every attention to her during her last moments. The deceased stated in her husband's presence, that he had done it with a sword. She subsequently said to him, "Elijah, I freely forgive you, as I hope the Lord will forgive me, but always avoid passion."

Pigott addressed the jury, contending that the facts proved were consistent with the supposition that the deceased, in resisting the effort of the daughter to remove her from the room, fell back on the sword, which the prisoner was too much intoxicated to know was unsheathed. In the course of his remarks, the learned counsel commented on the absence of express malice, and cited *Russell on Crimes* (2nd edit. vol. 1, p. 483.) Express malice is where one person kills another with a sedate, deliberate mind and formed design; such formed design being evidenced by external circumstances, discovering the inward intention; as, lying in wait, antecedent menaces, former grudges, and concerted schemes to do the party some bodily harm.

CRESSWELL, J. in summing up, said: "The charge is one of wilful murder, and the indictment charges that the prisoner committed the crime with malice aforethought. It is my duty to explain to you what that means, and for that purpose I will read to you the language of a much higher authority than my own. The use of those words does not require you to find any previous grudge or malignant feeling. It is sufficient if any act, likely to produce a serious injury, is done wilfully. In the first passage I am going to quote, the author says, "When the law makes use of the terms malice aforethought as descriptive of the crime of murder, it is not to be understood in that narrow restricted sense to which the modern use of the word malice is apt to lead one, a principle of malevolence to particulars. For the law by the term malice in this instance, meaneth, that the fact hath been attended with such circumstances as are the ordinary symptoms of a wicked,

depraved, malignant spirit." (b) Now, if a person use a deadly weapon, that is evidence of malice. Again: "any formed design of doing mischief may be called malice, and therefore that is not such killing only as proceeds from premeditated hatred or revenge against the person killed, but also in many other cases, such as is accompanied with those circumstances that show the heart to be perversely wicked, is adjudged to be of malice prepense, and consequently murder." (c) This is expressed more intelligibly by the late Mr. Justice Littledale, who says, "That malice in its legal sense, denotes a wrongful act, done intentionally without just cause or excuse." (d) Therefore, if you think the prisoner used the weapon wilfully, then that is such malice as the law requires. The great question for your consideration is, whether the wound was given wilfully. If done by the accident of the woman rushing on the sword, the prisoner would not be responsible. If you can find any evidence that he used the sword carelessly, and that without intending to inflict a wound, he caused it, then he is guilty of manslaughter; but if he used it intending to inflict a wound, then he is guilty of murder.

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Mr. Justice Cresswell then went through the evidence, and upon that part of it relating to the observations of the deceased immediately before the prisoner took the sword down, observed, that where death is occasioned, words form no justification in law. When in a contest, the law makes great allowance for blows and a personal encounter, but not for words. If therefore, in consequence of words, the prisoner was provoked and intended to do the deceased a grievous injury, that is no justification or alleviation of the offence. In conclusion, the learned judge said "There is no evidence of any conflict or of any provocation in law. If the prisoner used that sword intending to do a serious injury, that is such evidence of malice as the law holds to be murder. If the deceased woman rushed upon it, then it was an accident, and he is not guilty. If the wound was inflicted in a struggle at the door, without any intention on the part of the prisoner to use it, but having the sword in his hand, then there was such a careless use of that sword as to make him guilty of the crime of manslaughter.

Verdict, Guilty of manslaughter.

Cripps and Sawyer, for the prosecution.

Pigott and Huddleston, for the prisoner.

(b) Foster's Crown Law, p. 256.

(c) 1 Hawkins' Pleas of the Crown, c. 31, s. 18, cited 1 Russell on Crimes, 2nd edit. p. 482.

(d) M'Pherson v. Daniels, 10 B. & C.

COURT OF CRIMINAL APPEAL.

April 23, 1853.

(Coram JERVIS, C. J., PARKE, B., ALDERSON, B., WIGHTMAN, J.,
and CRESSWELL, J.)

REG. v. PRISCILLA PHILPOTT. (a)

*Parent and child—Cruelty—Neglect to provide necessary food—
Indictment—Material averment—Actual injury—Evidence.*

Neglect on the part of a parent to provide an infant child with necessary food and clothing is not a misdemeanor at common law, unless some actual injury is done to the child; and in an indictment for that offence, an averment that the child was actually injured is a necessary and material allegation, and must be proved.

Whether actual injury has been occasioned is a question of fact for the jury; but where, upon a case reserved, it appeared that a mother had left her children for several days without food or clothing, so that, but for the attention of a neighbour, they might probably have died; but that, in consequence of that attention, they did not suffer any serious injury, though the neighbour thought that they did suffer in some degree; and the question was put to the court whether the injury was sufficient in degree to constitute the offence:

Held, insufficient.

AT the General Quarter Sessions of the Peace for the County of Kent, holden at Maidstone on the 4th of January, 1853, Priscilla Philpott was tried upon an indictment which charged that, before and at the time of the committing of the offence next hereinafter-mentioned, to wit, on the 20th day of December, A.D., 1852, Priscilla Philpott, late of the parish of Chatham, in the county of Kent, was the mother of, and then had the care and custody of an infant female child, whose name is to the said jurors unknown, of tender years, to wit, of the age of seven years, and unable to support or maintain herself, or to provide herself with necessary and proper food and clothing; and the said Priscilla Philpott then was able to support and maintain the said infant child, and to provide the said infant child with necessary and proper food and clothing, whereby it became and was the duty of the said Priscilla Philpott to maintain and support the said infant child, and to provide the said infant with necessary and proper food and clothing. Nevertheless the said Priscilla Philpott, being an evil-disposed person, and not regarding her said duty in

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

that behalf, on the day and year aforesaid, at the parish aforesaid, in the county aforesaid, did unlawfully and wilfully neglect to support or maintain the said infant child, or to provide the said infant with necessary and proper food and clothing, and did then unlawfully and wilfully desert and abandon the said infant child, and did leave the said infant child without necessary food or clothing for a long space of time, to wit, four days, whereby and by reason of which said unlawful and wilful neglect, desertion and abandonment, the said infant child became and was greatly injured and weakened; against the peace of our Lady the Queen, her crown and dignity.

A second count in the indictment contained a similar charge against the prisoner for neglecting to support another of her children, being a female child of the age of six years. And there was a similar charge in a third count, with respect to another of her children, being a boy of the age of three years. It was proved upon the trial that the prisoner was the wife of a seaman in Her Majesty's service, who was absent on service; that she received a portion of his pay under a power given by her husband; that she had a house to herself in which she lived with her three children, the children mentioned in the indictment; that the prisoner was able to work and get her living if she chose; was a good needle-woman, and was used to work for the slopsellers.

Mary Anne Crane, a witness for the prosecution, a neighbour of the prisoner, stated that about five o'clock in the evening of the 20th December, prisoner called on her with another woman, Mrs. Gardner, who came to take leave of witness. Crane asked prisoner whether she was going to stay out all night again? That the prisoner made no answer and went away; that about half an hour afterwards witness went to see the children, the door of the house being only fastened with a latch; witness went in and found the children upstairs, in bed; that there was no food in the house; a flock-bed on the floor, with only one bit of blanket upon it; that the bed was wet; that witness gave the children a piece of bread and butter each; the little boy was crying; that witness went to them again the next morning, soon after five o'clock; the prisoner was not there, nor anybody but the three children, who were asleep; that witness went home, and about eight o'clock made some coffee and took to them, with a piece of bread and some coals, and made a fire; that about noon witness went in again and found them alone, not in bed; that the two girls were perfectly naked, and the little boy had nothing but a piece of an old apron about him; that she saw no other clothes that the children might have put on; that witness gave them a mess of turnips and potatoes; that at night witness begged some food for them, which they had. They were alone that night, as far as witness knew; that on the following morning (Wednesday) witness gave the children some bread, and afterwards took them to the parish work-house, and that on the next day (Thursday), about eight o'clock in the morning, the prisoner came to witness and asked her if she

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knew where her children were, and she told her; she said she went on board a barge there, and they took her to Maidstone, and that she had walked back (being a distance of eight miles.) Witness was of opinion that the children did suffer in some degree from want of proper nourishment and clothing, though not to any serious extent. The evidence of Mary Anne Crane was confirmed by other witnesses. It was therefore proved that the prisoner had left her children without food or clothing, and remained absent from five o'clock on Monday evening till eight o'clock on Thursday morning, that from their tender age the children were unable to provide for themselves, that the prisoner had the means of providing for them, and that but for the attention of a poor neighbour the children must have suffered more severely, and might probably have died for want of food, but that the children did not actually suffer any serious injury. The Court inclining to the opinion that the conduct of the prisoner was a misdemeanor at common law, the jury thereupon found the prisoner guilty upon all the counts.

But having some doubts on the subject the Court respite the judgment, and reserved the case for the opinion of the Court of Criminal Appeal. The doubts were upon the following points:—

First. Whether the conduct of the prisoner, in absenting herself as mentioned in the above statement, amounts to a misdemeanor at common law, irrespective of any actual injury to the children, which might be the result; whether, therefore, the averments in the indictment, that the children were thereby "greatly injured and weakened," were material and necessary to be proved? Secondly. If actual injury to the children is necessary in order to constitute the offence, and the averments, therefore, necessary to be proved, whether the injury, which to some extent the children must have sustained, was sufficient in degree to constitute the offence and support the averments?

The case was not argued by counsel on either side.

Judgment.

JERVIS, C. J.—We are all of opinion that this conviction is wrong. The chairman has submitted two questions to us. The first is, whether the conduct of the prisoner amounted to a misdemeanor independently of any injury to the children; in other words, whether it was necessary to prove the averments in the indictment, which charged that the children were greatly injured and weakened by the conduct of the prisoner. We are of opinion that these averments are material, and ought to be proved, and, therefore, that an offence would not be established without making out an injury to the children. In *Hogan's case* (2 Den. C. C. 277), it is expressly said that, in order to support an indictment for neglecting to supply with food a child of tender years, it must be shown that the neglect was followed by injury to the health of the child. The next question is, whether the injury, which to some extent the children must have sustained, was sufficient in degree to constitute the offence and support the averments. It is always for the jury to ascertain the fact whether actual injury has been done; but here it is found that the children did not actually

suffer any serious injury, though they must have suffered in some degree, and that is not, in our opinion, sufficient to support the conviction. In *Friend's case* (R. & R. 20), which was an indictment for refusing to supply an apprentice with necessaries, the opinion of the judges was, that to constitute an indictable breach of duty, it must be shown that the withholding of necessaries occasioned injury to the health of the apprentice. This view is confirmed to some extent by the 14 & 15 Vict. c. 11, the first section of which treats the neglect to supply necessary food as an offence of the same degree as other conduct, whereby the life of the apprentice is endangered, or the health permanently injured, or likely to be so. The conviction, therefore, is wrong.

Judgment reversed.

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v.
PRISCILLA
PHILPOTT.

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Parent and
child—Cruelty
—Neglect.

COURT OF CRIMINAL APPEAL.

April 23, 1853.

(Coram JERVIS, C. J., PARKE, B., ALDERSON, B., COLERIDGE, J.,
and CRESSWELL, J.)

REG. v. MANKTELOW.

Abduction—What is a sufficient “taking out of the possession” of the parent or guardian—Stat. 9 Geo. 4, c. 31, s. 20.

In order to constitute the offence of abduction within stat. 9 Geo. 4, c. 31, s. 20, it is not necessary that the girl should be taken by force, either actual or constructive, or be taken out of the actual possession of the parent or guardian. It is enough if she be persuaded by the prisoner to leave her home, and the control of the parent continues down to the time of the taking.

Where, therefore, the prisoner persuaded a girl under sixteen to meet him at a place two miles from her father's house, where she lived, for the purpose of going with him to America; and she did so voluntarily,—leaving her home alone, then meeting the prisoner at the place appointed, and afterwards travelling with him to London:

Held, that he was guilty of abduction.

THE following case was stated by Coleridge, J.:—The prisoner was tried before me, at the last Maidstone Assizes, upon an indictment framed on the 20th section of the 9 Geo. 4, c. 31, which makes it a misdemeanor “if any person

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

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shall unlawfully take or cause to be taken any unmarried girl being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her." The prisoner had for some time lodged in the house of John Frost, a labouring man, at Rottenden, and stated to him and his family his intention to emigrate to America. On the 7th February he took leave of them, and went with John Frost to Maidstone by the Sutton-road, there to take the train for London. It was understood between them that John Frost, after parting with him, would return by the Staplehurst-road. A short time before his departure he had privately persuaded Ann Frost, John's daughter, a girl between twelve and thirteen, to go with him to America, and on the morning of his departure he had secretly told her to put up her things in a bundle, and walk to a point named on the Sutton-road, where he would meet her. She did so, and the prisoner having parted with the father on the Staplehurst-road returning home, went to the Sutton-road, and met her at the place appointed. He placed her clothes among his own in one of his boxes, and the two travelled in a covered van all night to London, and in the morning he was taken into custody at the instance of the girl's uncle. He stated at the time of his apprehension that he had paid the girl's passage to London, and was going to take her to America.

Case.

The prisoner's counsel relied on the case of *R. v. Meadows* (1 C. & K. 399), and argued that as the girl went voluntarily there was no taking within the meaning of the 20th section. The case of *R. v. Robins*, (ibid 458), was cited on the other side, and it was stated that my brother Maule, at the same place, on the previous circuit, had declined to act on *R. v. Meadows*. I overruled the objection, and told the jury that the girl was in her father's possession while in his house, although he was not actually in it, that the taking need not be by force, nor against the girl's will, and that if the prisoner, by persuasion, induced her to leave her father's roof against his will, in order to her going with him to America, the case was within the statute. On this direction the jury found him guilty, and I sentenced him to nine calendar months imprisonment. I reserved the point, and now desire the opinion of the judges on the propriety of the conviction.

Ribton for the prisoner.—The question is, what meaning is to be given to the words "take or cause to be taken" in the 9 Geo. 4, c. 31, s. 20, which enacts, "that if any person shall unlawfully take, or cause to be taken, any unmarried girl being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, every such offender shall be guilty of a misdemeanor." Now, in order to constitute an offence under that section, the taking must be by force of some kind; and mere persuasion will not do. How can it be said that a girl is taken out of the possession of her parents or guardians, who leaves home of her own free will, without any sort of coercion or control

being exerted towards her. The case of *Reg. v. Mary Ann Meadows* (1 Car. & K. 399), is an authority expressly in point. In that case the facts were, that a girl under sixteen, who was in service at Wolverhampton, was returning from an errand, when she met the prisoner, who asked her if she would go to London, as her mother wanted a servant, and would give her 5*l.* wages. They went away together to Bilston, and afterwards to Birmingham, passing under a feigned name. Parke, B. upon proof of the above facts said, "I think this will not do; there must be a taking, and from the evidence it appears that the child accompanied the prisoner voluntarily." It was argued that as the prisoner had induced the girl to go by false representation there was a constructive taking; but the learned judge, who stated that he had consulted Coleridge, J. upon the subject, held that there must be an actual taking or a causing to be taken away to bring a case within sect. 20; and that "a mere decoying or enticement away, which would be an offence within the meaning of the 21st section (b) would not constitute one under the 20th." That case was quoted in *R. v. Robins* (1 Car. & K. 456); but the circumstances of the latter were materially different. There the prisoner went to the father's house at night, and placed a ladder at a window, and held it whilst the daughter descended, and then they eloped together. It was held by Atcherley, Serjt., with the concurrence of Tindal, C.J., that under those circumstances there was a taking by the prisoner within the meaning of sect. 20, although it was proved that the girl herself had suggested the elopement. But that is not inconsistent with *R. v. Meadows*, because, in the mode of leaving the house there was a species of force sufficient to constitute a constructive taking. There was an act done by the prisoner; he assisted her in breaking out from her father's house. In the present case the prisoner was not even present when the girl left home. The case against him rests entirely upon an antecedent persuasion; and when the difference in language between ss. 20 and 21 is pointed out, it would be a very great stretch of construction to hold that such a case came within the words of sect. 20. In sect. 19, with regard to the abduction of women on account of their fortune, where the taking must be against the will of the woman, the words are, "take away or detain." [JERVIS, C.J.—There would, at all events, be a sufficient taking when the prisoner met the girl upon the road; but was it a taking "out of the possession of her father"?] It is submitted that it was not. [ALDERSON, B.—Would a child be out of its father's possession if it was sent out upon an errand or for a walk?] Here the girl had left the house not intending to return. [JERVIS, C.J.—She would have returned if the prisoner had not met her, and she left by his persuasion.] The case of *Reg. v. Kipps* (4 Cox

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(b) The words of sect. 21 are that, "if any person shall maliciously, either by force or fraud, lead or take away or decoy or entice away or detain any child under the age of ten years with intent to deprive the parent or parents, &c. of the possession of such child, or with intent to steal any article upon or about the person of such child," &c. he shall be guilty of felony.

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Crim. Cas. 167), was alluded to at the trial; and that case is certainly at variance with *R. v. Meadows*. In that case Maule, J. held that it was no answer to an indictment for abduction under sect. 20, to show that the girl went voluntarily from her home, in consequence of the persuasions of the prisoner, to a place at some distance, where she met the prisoner, and whence she went away with him without any reluctance. The learned judge in that case observed that if the construction apparently put upon the statute in *R. v. Meadows* be the right construction the act can hardly ever be violated except in the case of children in arms. [JERVIS, C.J.—In a note to *R. v. Kipps* the peculiarity of the facts in *R. v. Meadows* is pointed out. It is said truly, "the real facts of the case of *R. v. Meadows* do not warrant the marginal note. The defendant there, Mary Ann Meadows, was a girl who had formerly been a schoolfellow of Allen, the girl alleged to have been abducted, and was probably very little older than Allen herself. Allen was out at service, and had been sent upon an errand by her mistress, Mrs. Tombs. As she was returning she met Mary Ann Meadows, who proposed to her to accompany her to London, upon a representation that Mrs. Meadows, her mother, wanted a servant, and would engage her. They both went away together at once. If this had been held to be abduction any two school girls playing truant in company might have been indicted respectively each for abducting the other." In *R. v. Biswell* (2 Cox Crim. Cas. 279), Alderson, B. appears to have held that although the girl was the first to propose that she and the prisoner should leave the father's house, he was guilty of abduction; but in that case they left together. *Reg. v. Hopkins* (Car. & M. 254), was a case in which the prisoner took away the girl with the consent of the parents, but that consent was obtained by fraud; and Gurney, B. intimated that in his opinion the offence of abduction was complete; but if it had become necessary he would have reserved a case for the opinion of the judges. That necessity however did not arise, because the prisoner was convicted of another offence, and no sentence was passed upon the indictment for abduction.

No counsel was instructed on the part of the prosecution.

JUDGMENT.

Judgment.

JERVIS, C.J.—In this case the first question submitted to us is as to the meaning of the word "take" in the 20th section of this act of Parliament; and Mr. Ribton contends that it is confined to a taking by force, either actual or constructive; but the section itself shows that that is not the meaning. It provides that if any one shall unlawfully take, or cause to be taken, any girl under the age of sixteen out of the possession and against the will of her father, or any person having the charge of her, he shall be guilty of a misdemeanor; the taking contemplated therefore by the statute is a taking against the will of the parent or guardian, and not a taking against the will of the girl, which would neces-

sarily be a taking by force. It is the father or guardian, whom it is the object of the Legislature to protect against the aggression of the abductor. But the taking must also be "out of the possession" of the parent or guardian; and the next question is, what is the meaning of that word "possession?" Now, actual manual possession is clearly not necessary; and it appears to us that the statute is satisfied if at the time of the taking the girl continues under the care, charge, and control of the parent. Then what are the facts in the present case? The girl left her home by the prisoner's persuasion for the particular purpose of meeting the prisoner at an appointed place; and until that purpose was accomplished the control and possession of the father continued. If she had not met the prisoner she would have returned home, but he interferes and persuades her to go with him; and she does so; and he takes her bundle and puts it with his own in his box. By these acts all care and control on the part of the father is determined; and at that time the prisoner takes her out of the possession of her father. We are of opinion, therefore, that the conviction is right; and the case of *R. v. Kipps* is in point. There the facts resembled those of the present case; and the decision of Maule, J. was in accordance with this judgment. The case of *R. v. Meadows* was very different in its facts as is well pointed out in the note to *R. v. Kipps*.

PARKE, B.—I am entirely of the same opinion.

ALDERSON, B., COLERIDGE, J., and CRESSWELL, J. concurred.
Conviction affirmed.

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COURT OF CRIMINAL APPEAL.

April 23, 1853.(Before JERVIS, C.J., PARKE, B., ALDERSON, B., WIGHTMAN, J.,
and CRESSWELL, J.)

REG. v. ELIZABETH BROOKS. (a)

*Felonious receipt of stolen goods—Receipt by a wife from her husband. A wife received from her husband goods which he had stolen, she knowing at the time that they were stolen; and she endeavoured afterwards to prevent their discovery.**The judge told the jury that as her husband had delivered the stolen articles to the prisoner, the law presumed that she acted under his control in receiving them, but that this presumption might be rebutted. If, therefore, in considering the evidence they were perfectly satisfied that at the time when she received any of the articles she knew that they were stolen, and in receiving them acted not by reason of any control or coercion of her husband, but voluntarily and with a dishonest and fraudulent intention, she might be found guilty. The jury having found a verdict of guilty :**Held, that the conviction could not be supported.*

THE following case was reserved by the Recorder of Liverpool:—
The prisoner, Elizabeth Brooks, was indicted at the Liverpool Borough Sessions in February last, for feloniously receiving dressing-cases, bell-corals, pencil cases and other goods of Everard Eastee, knowing them to be stolen.

Henry Brooks, the husband of the prisoner, had been for several years employed as salesman, by Edward Eastee, a shopkeeper at Liverpool, who dealt in dressing-cases and the other articles mentioned in the indictment.

In the course of the year 1852, Henry Brooks stole from Eastee's shop the articles mentioned in the indictment and delivered them into the hands of the prisoner, his wife. None of these articles were missed before the prisoner's apprehension, and whether they were stolen at one time or at different times did not distinctly appear. On the first suspicion of his dishonesty, Henry Brooks absconded and was not subsequently taken into custody; his house was searched and a box was there taken from the prisoner, after some struggle on her part to retain it. This box contained a quantity of pawn-tickets relating to and which led to

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

the discovery of the property mentioned in the indictment and produced at the trial. Several of these pawn-tickets had been given for articles which the prisoner had herself pledged, falsely stating as to some that they were birthday presents, and as to others, that they were articles in which she dealt. In two instances the prisoner had sent different persons to pledge some of the articles produced, and had afterwards received the pawn-tickets and the money lent by the pawnbrokers. The prisoner said in her defence that she did not know that the things were stolen. The jury were told by the Recorder that as her husband had delivered the stolen articles to the prisoner, the law presumed she acted under his control in receiving them, but that this presumption might be rebutted. If, therefore, on considering the evidence, they were perfectly satisfied that at the time when she received all or any part of the articles produced she knew that they were stolen, and in receiving them acted not by reason of any control or coercion of her husband, but voluntarily, and with a dishonest and fraudulent intention, she might be found guilty. The jury deliberated, and returned a verdict of guilty.

The prisoner was undefended. The Recorder, entertaining doubts as to the law, reserved, and now submits for the consideration of the Justices of either Bench and Barons of the Exchequer, the questions whether his direction was right, and whether on the evidence stated the case ought to have been left to the jury?

Judgment was postponed, and the prisoner committed to the Liverpool Borough Gaol until the questions shall have been considered and decided.

No counsel was instructed on behalf of the prisoner.

Brett, for the prosecution.—The direction of the Recorder was right, and there was evidence to support the verdict. The prisoner was not merely acting under the coercion of her husband; she took active steps to conceal the property. The presumption of law, that a wife acts under the control of her husband may be rebutted by evidence of her acting independently.

PARKE, B.—There is no evidence here of any independent act done by her.

CRESSWELL, J.—She receives the stolen goods from the hands of her husband.

Brett.—There is a violent attempt at concealment on her part.

PARKE, B.—The desire to shield her husband from detection is hardly a fault in a wife.

ALDERSON, B.—You seek here to make her an accessory after the fact.

Brett.—She disposed of the stolen goods in the absence of her husband, and gave false accounts respecting them. That was evidence for the jury of her acting voluntarily and fraudulently in the transaction.

ALDERSON, B.—There was no activity on her part as to the receipt of the goods.

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PARKE, B.—I do not see how, under any circumstances, a wife can be convicted of receiving from her husband.

JERVIS, C. J.—If the direction was right, there was no evidence to support a conviction.

Conviction reversed.

COURT OF CRIMINAL APPEAL.

April 23, 1853.

(Before JERVIS, C.J., PARKE, B., ALDERSON, B., WIGHTMAN, J.,
and CRESSWELL, J.)

REG. v. THOMAS MILLARD AND HENRY MILLARD. (a)

Perjury—Judicial proceeding—Jurisdiction of justice—Information on oath—Malicious Trespass Act.

An information on oath is not necessary to give a justice jurisdiction to convict of an offence under sect. 24 of stat. 7 & 8 Geo. 4, c. 30, the provision in sect. 30 being cumulative.

Where, therefore, upon an indictment for perjury it was proved that the defendants had sworn falsely before two justices of the peace upon the hearing of an information not upon oath, for an offence under sect. 24 :

Held, that they were properly convicted.

THE following case was stated by Wightman, J.:—The defendants were severally indicted for perjury in the evidence they gave before two magistrates, upon the trial of an information under the Malicious Trespass Act, 7 & 8 Geo. 4, c. 30, s. 24.

Mr. Robertson, a gentleman of the county of Pembroke, laid an information, but not on oath, before a justice of the peace, against a person of the name of Wiggin for wilful damage to the carriage of the complainant. A summons was issued against Wiggin to appear to answer the charge, and he appeared accordingly, and the defendants Thomas Millard and Henry Millard were examined as witnesses against Wiggin, and the indictment was for perjury upon that examination. It was objected for the defendants that, to give

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

the magistrate jurisdiction the information must, by the 30th section of the act, be on oath, which it was not in the present case. I thought that the magistrate had jurisdiction, and that the omission to lay the information on oath was an error in procedure only; but as the case is one of very general application I reserved the point for the Court of Appeal.

W. WIGHTMAN.

The prisoners were convicted, and were sentenced to imprisonment on that indictment. (b)

Terry, for the prisoner.—This conviction cannot be sustained, because the false swearing was not in a judicial proceeding. There was no information on oath to give the justice jurisdiction: (3 Inst. 106.)

JERVIS, C.J.—You must not assume that an information on oath is necessary. The 24th section of the 7 & 8 Geo. 4, c. 30, gives, in general terms, jurisdiction to a justice in all cases of malicious injury to property, “for which no remedy or punishment is thereinbefore provided,” and any justice who has general jurisdiction in the place may inquire into such a case whenever the facts come to his knowledge, and so far as that section is concerned he may clearly do so without information on oath. But, by the 30th section, and for the purpose of proceeding under its provisions, an information on oath is necessary; and the question is, whether that mode of proceeding must be adopted in all cases, or whether it is an additional remedy. The preamble to sect. 30 expressly states that it is for the *more effectual* prosecution of all offences punishable on summary conviction under this act;” and the question is whether it is not a cumulative remedy, which the prosecutor may at his choice adopt or forego. Argument.

PARKE, B.—Unless the statute requires that the information be on oath it need not be on oath, and unless it requires that the information be in writing it need not be in writing: (*Basten v. Carew*, 3 B. & C. 649; *Wilson v. Weller*, 1 B. & B. 57.) The question, therefore, before us is, whether the statute makes it a condition in all cases that the information be on oath; if it does, the conviction is wrong; but if not, it is right. (c)

(b) By stat. 7 & 8 Geo. 4, c. 30, s. 24, it is enacted, that if any person shall wilfully or maliciously commit any damage, injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no remedy or punishment is hereinbefore provided, every such person being convicted thereof before a justice of the peace shall forfeit and pay such sum as shall appear to the justice to be a reasonable compensation, &c., not exceeding 5*l*. (The section then provides for the application of the penalty, and in case of nonpayment authorizes imprisonment of the offender.)

Sect. 30. “And for the more effectual prosecution of all offences punishable on summary conviction under this Act, be it enacted that where any person shall be charged on the oath of a credible witness before any justice of the peace with any such offence, the justice may summon the person charged to appear at a time and place to be named in such summons; and if he shall not appear accordingly, then upon proof of the due service, &c., the justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person,” &c.

(c) By stat. 10 & 11 Vict. c. 43, s. 10, it is expressly provided that, “unless some particular act of Parliament shall otherwise require,” the information for offences punishable on summary conviction “may be laid without any oath or affirmation being made of the truth thereof,” except in cases where a warrant of apprehension is issued in the first instance.

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Terry.—The 30th section, as the preamble shows, points out the mode of prosecution to be adopted; the ordinary mode being deemed insufficient; it provides another which is to be “more effectual.” Sect. 24 merely creates the offence, and imposes the punishment, but does not prescribe any mode of prosecution, except generally that it is to be by conviction before a justice. Then section 30 is passed for the very purpose of prescribing a course of procedure for “all offences” punishable on summary conviction under that act; and by that section, the Legislature requires an information on oath before the issuing of a summons to the party charged. Here it appears that the party charged was summoned without the information on oath of a credible witness. The proceedings, therefore, upon the hearing of that summons were without jurisdiction.

No counsel appeared for the prosecution.

Judgment.

JERVIS, C.J.—We are all of opinion that the conviction is quite right. The 24th section gives general jurisdiction in cases of wilful damage not previously provided for; but it is objected that there must be an information upon oath. It is, however, established that an information need not be in writing or on oath, unless the statute requires it, and that the magistrate may proceed without an information on oath, if he has jurisdiction over the subject-matter and has good reason for setting the law in motion. Now, the 30th section does require an information on oath as a condition of certain proceedings; not as a condition of every prosecution of every offence under the act, but “for the more effectual prosecution” of offences under the act. If we look at the 29th section we find the words, “that the prosecution of every offence punishable on summary conviction under this act shall be commenced within three calendar months,” &c. That is a general provision applicable in all cases, and to every prosecution. The 30th section differs in language, it has for its object “the more effectual prosecution,” and it in fact only furnishes an additional mode of proceeding which the prosecutor may or may not adopt.

PARKE, B.—I am entirely of the same opinion.

ALDERSON, B., WIGHTMAN, J., and CRESSWELL, J. concurred.

Conviction affirmed.

COURT OF CRIMINAL APPEAL.

May 7, 1853.(Before JERVIS, C.J., ALDERSON, B., CRESSWELL, J., ERLE, J.,
and MARTIN, B.)

REG. v. WELMAN. (a)

*False pretences—Connection of statements made at different times.**Two statements made at different times, even at the interval of a month, may be so connected together as to constitute one indictable false pretence; and it is entirely a question for the jury whether they ought to be so connected.**Where, therefore, the prisoner falsely stated on one day that a certain club had 7000l. in the bank, in order to persuade the prosecutrix to become a member, and to hand money over to him, but she refused to do so; and a month afterwards the prisoner again recommended the club to her as "strong and respectable," and then obtained the money: Held, that the jury were properly directed, that they might take into account what passed at the first interview as well as what passed at the time when the money was paid; but that before they could convict the defendant they must be satisfied that the representations were knowingly false and fraudulent, and that the prosecutrix was induced to part with her money by those representations.*

THE following case was reserved by the Recorder of Manchester:—At the last Easter Sessions for the city of Manchester, holden on the 4th of April, 1853, Harvey Welman was tried and convicted before me for obtaining money under false pretences.

The indictment against him was as follows, that is to say:—Borough of Manchester in the county of Lancaster, to wit. The jurors for our Lady the Queen upon their oath present, that Harvey Welman, late of the borough of Manchester, in the county of Lancaster, labourer, on the 4th day of August in the year of our Lord 1850, at the borough aforesaid, in the county aforesaid, and in the jurisdiction of this court, unlawfully, knowingly and designedly, did falsely pretend to one Jane Jackson that there existed a certain burial society which he the said Harvey Welman then and there, within the said jurisdiction, mentioned and described to the said Jane Jackson, and to which the said Harvey Welman then and there represented that he belonged, composed

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

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of a number of persons associated together under certain rules and regulations, and managed according to certain principles, and the affairs of which were carried on and conducted under the superintendence and direction of a body of officers; that its affairs were conducted in an honest, business-like and respectable manner; that it was a strong society, that it was a rich society, and that the said society had about 7,000*l.* in the bank; by means of which said false pretences the said Harvey Welman did then and there, and within the said jurisdiction, unlawfully and knowingly obtain from the said Jane Jackson a certain sum of money, to wit, threepence of the moneys of Thomas Jackson, with intent then and there, and within the said jurisdiction, to cheat and defraud. Whereas in truth and in fact, no such society as that mentioned and described by the said Harvey Welman to the said Jane Jackson either then or at any other time existed, nor were its affairs carried on or conducted under the superintendence or direction of a body of officers, nor were the affairs then or at any other time conducted in an honest, business-like and respectable manner, nor was it then or at any other time a strong and rich society, nor had the said society then, or at any other time, 7,000*l.*, or about or nearly 7,000*l.* in any bank or banks, or elsewhere, all which the said Harvey Welman then and there, and within the said jurisdiction, and at the time of the making the said false pretences, well knew; against the form of the statute in such case made and provided, and against the peace of our Lady the Queen, her crown and dignity.

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2nd count charges the same offence, without alleging that the society was composed of a number of persons associated together under certain rules and regulations, and managed according to certain principles.

3rd count charges the same offence, without alleging that the defendant represented that he belonged to the society, or that it was composed of a number of persons associated together under certain rules and regulations, and managed according to certain principles, and the affairs of which were carried on and conducted under the superintendence and direction of a body of officers, or that its affairs were conducted in an honest, business-like and respectable manner.

4th count charges the same offence, merely alleging that a certain burial society, which the defendant mentioned to Jane Jackson, was a respectable society, that its affairs were conducted in an honest, business-like and respectable manner, and that it had about 7,000*l.* in the bank.

The defendant pleaded not guilty.

The indictment contained twenty-four counts, comprising twelve separate and distinct charges of obtaining money from different persons and on different occasions, as appeared by the opening of the learned counsel for the prosecution; the indictment charged all the offences to have been committed on the same day. On this being stated, I told the learned counsel that on the authority of *Rex v. Bassett* (1 Cox Crim. Cas. 51), I should ultimately call upon

him to elect as to which case should go to the jury, but that I would not interfere with his making the fullest statement, or giving evidence on any count or counts he pleased before electing on which charge to proceed.

The learned counsel went on with his statement, and afterwards called witnesses on two other cases in the indictment, besides that to which the four counts above stated refer, one occurring eighteen months before, and the other three months after.

The facts of the case for obtaining money by false pretences from Jane Jackson, charged in the counts above set forth, were as follows:—In July, 1850, the defendant, Harvey Welman, called at the house of the prosecutrix, Jane Jackson, then a married woman, but now a widow; he had some cards with him; he said he belonged to a club, and was canvassing for members; he said it was called "The Mutual Benefit;" he said it was a very strong club; they had about 7,000*l.* in the bank; he said it was a very excellent society—a strong club—very respectable. Witness declined to enter.

The defendant called again upon her in a month afterwards, early in August; he still praised the club, said still it was strong and respectable. That was all he said at that time, and she then entered herself, her husband, and one daughter as members, which she would not have done unless the defendant had made these representations. She paid at that time one penny for each name (being the threepence, for obtaining which by false pretences the defendant is indicted.) Witness mentioned that her husband's age was then fifty-two, which the defendant put down in a book, and also upon a card, which he gave to and left with her at the time, and she continued to pay as a member until her husband's death, on the 22nd June, 1852. On that evening she called on defendant to acquaint him with her husband's death; he said he would call next morning, and she must find the card, which she had not brought with her. He did call next morning. She gave him the card, which he examined for twenty minutes, and then said her husband was above fifty when entered, and ought to have paid twopence instead of one penny. She replied she had paid all he demanded, and if he had demanded more at the time of entry she would have paid it. He then said she was only entitled to 4*l.* 10*s.* for burial money, instead of 5*l.*, in consequence of that penny not having been paid. Defendant then offered her a receipt for 5*l.*, which he wanted her to sign. She said she would not sign for 5*l.* If he would alter the figures to 4*l.* 10*s.*, and give her the money, she would sign for that, but she should still look after the 10*s.* He then said he would not give her a farthing. She did not sign any receipt. He went away, and she never got a farthing. She afterwards went to Carpenters' Hall on the second Thursday in July, understanding it to be a quarterly meeting. Defendant, Samuel Clegg, Moon, and Heywood, were there. She applied to them for the money. Defendant said he would never give her a farthing, and would send for a policeman to turn her out, and she

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got no satisfaction. The card left by defendant with Jane Jackson when she became a member was a printed one, and had on it "instant benefit." "The General Assurance Burial Society is held at Carpenters' Hall, Brook-street, Manchester—office, 7, Cobden-street, Gartside-street; superintending director, Harvey Welman, 7, Cobden-street; president, Samuel Clegg, 9, Granby-row; secretary, William F. Heywood, 56, Thomson-street, Oldham-road:" and it appeared that these three persons filled those respective offices in the society at the time Jane Jackson became a member of it; and that their respective addresses were correctly stated. There was printed on the card, "in cases of dispute, fair arbitration will be allowed;" it also contained the rates of payment according to the ages of the members; and two or three weeks after she entered her husband's name, she discovered that the payment for him ought to have been twopence instead of a penny, but she did not think it was her place to mention it, as only a penny had been demanded. She never asked for an arbitration, nor was it mentioned to her. She paid her subscriptions for the first three months to defendant; afterwards, to Heywood, the secretary. After defendant had examined her card, he said he would give her 4*l.* 10*s.*, but did not offer the money. She joined the society, expecting that, in the event of the death of her husband or child, she should get the burial money. Certain printed rules were put in on the part of the prosecution. "Rule 7.—This society shall be governed by a board of directors, namely, the founder of the society (which was the defendant), who shall be the superintending director, secretary, president, senior collector, and five heads of families chosen from the body." No heads of families were ever so appointed; and it did not appear that any member had ever applied to have such appointment made. The defendant, as superintending director, managed and controlled everything. Samuel Clegg was appointed by defendant president and canvasser in 1849. He continued to canvass till about a year ago, when he left the society, and during that time he enrolled 1000 members. Besides the quarterly meetings, he attended a meeting at Carpenters' Hall every Thursday evening from seven till nine. The rules, as well as cards of membership, were on the table at these meetings; the collectors brought their books there, which were examined by Welman, the defendant; the money collected was paid over to him, and he entered it in his book. This book was produced at the trial: it contained entries of receipts and disbursements, including burial money. Four instances of payments for burial money occurred in one page. At the time of the prisoner's apprehension on this charge, this book showed a balance of 39*l.* 18*s.* 8*d.* in favour of the society; and it was shown that, in two instances within the knowledge of Clegg, defendant (Welman) had paid burial money when the parties were out of benefit; that is, not entitled, by reason of some irregularity, to enforce such payment. The other officers of the society, namely, Joseph Moon, who succeeded Clegg as president, and Heywood,

the secretary, were called, and proved the superintending director to have been the sole director, and to have managed everything; but neither they nor Clegg ever saw or heard of any banking book belonging to the society, or ever knew themselves, or heard from Welman, of a sum of 7,000*l.*, or any sum of money whatever, belonging to the society, being in any bank. This was the case.

The prisoner's counsel addressed the jury.—I summed up the case, telling the jury that I thought they might take into account what passed at the first meeting between defendant and Jackson, as well as what passed at the time when the threepence was paid by her; but that, before they could convict the defendant, they must be satisfied that these representations were false, that they were made by defendant, knowing them to be false, with the view to induce Jane Jackson to pay this entrance money to become a member; that she was induced by these representations to do so, and that he intended at the time that she never should reap any benefit from such membership. The jury found the defendant guilty. I reserved the judgment until the opinion of the Court of Criminal Appeal could be taken. The questions for the opinion of the court are—1st. Whether, on the facts stated, there was a case within the statute which I ought to have left to the jury at all? 2ndly. Whether I was right in telling the jury that they might consider what passed at the first and second meeting between defendant and Jackson as one continuing representation? The point that was raised with reference to the indictment in this case, may not be brought before the court in such a way as to call for their decision upon it; but I venture to submit that it is of very great importance indeed to Courts of Quarter Sessions to have the authority of the case of *Reg. v. Bassett* decided one way or the other.

The defendant (Welman) is in custody for want of bail.

Wheeler, for the prisoner.—The case ought not to have been left to the jury at all, because the statement which induced the prosecutrix to part with her money was not false; and the false statement made a month before, which, at the time, had not the effect of inducing her to part with her money, cannot be imported into the consideration: it is much too remote.

JERVIS, C.J.—That is a question for the jury. If they were at liberty to draw the conclusion which they have drawn, we cannot interfere.

ALDERSON, B.—All questions of degree must be decided by the jury.

Wheeler.—In this case there was evidence that a society existed; and the pretence by which the money was obtained was, that the society would, upon certain events, pay certain sums of money.

ALDERSON, B.—The prosecutrix no doubt entertained such an expectation; but she was induced to join the society by the false representation, that there was so much money in the bank; just as if a man was induced to subscribe 5*l.* to a church, by a false statement that there was a debt upon it; or to cash a cheque by

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a false statement that it was a valid cheque;—these would not be less false pretences because the party defrauded might expect a future benefit or payment.

CRESSWELL, J.—The whole of the statement made need not be false; but only that part which operates on the mind of the person defrauded; and here, although there was a club, and therefore the prisoner's statement was not in every part untrue, the jury find that the money was obtained by the false pretence charged.

Wheeler.—The evidence fails to establish it. How can it be said that the statement made at the first meeting is to be taken as part of the statement made at the second?

CRESSWELL, J.—He does not, at the second, correct the misstatement made at the first.

ERLE, J.—And “he *still* praised the club.” That imports a continuing transaction, I think.

Wheeler.—No reference whatever was made to what had previously taken place.

JERVIS, C. J.—How can we draw a line, and say where the influence of a misstatement will cease altogether? The longer the interval, the less the probability that the influence continues; but it must be a question for the jury. The misstatement not corrected, may have influenced the mind of the prosecutrix; and the jury have found that it did. If the law were otherwise, this offence might be committed with impunity; because the money would never be taken at the time that the false statement was made. At least none but fools could be convicted.

Wheeler.—Even according to the direction of the Recorder the conviction is wrong; because there was no evidence whatever that the prisoner intended that she should never reap any benefit from her membership.

CRESSWELL, J.—It seems to me quite clear that that was his intention; and that he quarrelled with the prosecutrix about the 4l. 10s. for the purpose of carrying it out.

No counsel appeared for the prosecution.

Judgment.

JERVIS, C. J.—We are all of opinion that the conviction is right. The question is, whether the Recorder was right in telling the jury that they might take into account what had been stated at the first interview; and I think he was. Whether, in fact, the two statements were connected together in their influence upon the mind of the prosecutrix, was a question for the jury. Then, secondly, if they might be so connected, was there a case within the statute? I think there was, if the jury chose to connect them. To bring the case within the statute, the statement must falsely represent some bygone fact as existing, and it must be made for a fraudulent purpose. Is there in this case such a statement? The prisoner represented that the club had 7,000l. in the bank; and there never was such a sum as that sum of 7,000l. Then, did the statement as to it influence the mind of the prosecutrix? The jury say that it did; and they also find, that the motive was to obtain the money of the prosecutrix. There was

clearly a case for the jury; and the conviction is right. We will consider the case of *R. v. Bassett* (1 Cox Crim. Cas. 51), when it is properly before us.

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Conviction affirmed. (b)

(b) In *Reg. v. Bassett*, the indictment contained eight counts, each count charging a separate offence, by obtaining money under a distinct false pretence from a different person; and Maule, J. there required the counsel for the prosecution to confine the proof to one count; adding, "I am not sure that the indictment is not demurrable."

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COURT OF CRIMINAL APPEAL.

May 7, 1853.

(Before JERVIS, C.J., ALDERSON, B., CRESSWELL, J., ERLE, J.,
and MARTIN, B.)

REG. v. JABEZ KITSON. (a)

*Secondary evidence—Notice to produce—Time of service—Arson—
Intent to defraud insurance company—Proof of policy.*

Upon the trial of an indictment for arson, with intent to defraud an insurance company, the policy was not produced, but parol evidence of it given, a notice to produce having been served upon the prisoner about mid-day the day before trial:

Held, that the parol evidence was improperly received and the conviction wrong.

THE following case was reserved by Pollock, C.B.:—The prisoner was tried before me at the last assizes for Cambridgeshire, for arson, with intent to defraud an insurance office. At the trial, it became necessary to prove the policy of insurance. No other notice had been given to the prisoner to produce it except a notice served about mid-day the day before the trial; the prisoner's residence (where the fire happened) was thirty miles from Cambridge.

It was objected, on the part of the prisoner, that the notice was insufficient, and that parol evidence of the policy could not be received without notice to the prisoner to produce it.

For the prosecution it was contended, first, that the notice was sufficient; secondly, that the indictment itself was notice.

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

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I received the evidence, but reserved the point. The prisoner was convicted. The question for the opinion of the court is, whether the parol evidence was properly received, and whether the conviction ought to stand?

No counsel appeared for the prosecution.

Naylor, for the prisoner, was not called on.

JERVIS, C. J.—The point is quite clear. The case does not fall within the rule that a notice to produce is not necessary where the pleading gives sufficient notice of the subject of inquiry; because the indictment is not framed upon the subject-matter of the policy,^(b) and the notice to produce was not given in time. The conviction, therefore, is wrong.

MARTIN, B.—It is said to be the practice not to give the policy in evidence, but I do not understand why.

JERVIS, C. J.—They must show that the policy is in existence. We are not to be understood as deciding that it is necessary, under all circumstances, that the policy should be produced, but that the fact of insurance must be proved by legitimate evidence. That was not done in this case.

The other judges concurring:

Conviction reversed.(c)

(b) In *R. v. Aickles* (1 Leach, 330), where the indictment was for stealing a bill of exchange, parol evidence of it was received, though no notice to produce had been given, because the instrument itself was described in the indictment.

(c) In *R. v. Ellicombe* (1 M. & Rob. 260), Littledale, J., after consulting Park, J., held in a similar case that a notice to produce the policy served upon the prisoner during the assizes, two days before the trial, was insufficient to let in secondary evidence. It is not stated in the principal case when the assizes commenced.

COURT OF QUEEN'S BENCH.

May 5, 1853.

(Before LORD CAMPBELL, C.J., WIGHTMAN, J., ERLE, J., and CROMPTON, J.)

REG. v. DUGDALE. (a)

Bail in error in criminal cases—Form of recognizance.

A defendant in misdemeanor having obtained a writ of error to the Exchequer Chamber, entered into a recognizance with two sureties approved by a judge, the condition of which was to prosecute the writ of error with effect; to surrender personally on the hearing of the writ of error; and, in case the judgment should be affirmed, to surrender himself to the Court of Exchequer Chamber to be further dealt with according to law:

Held, that this recognizance did not comply with the stat. 8 & 9 Vict. c. 68, s. 1, which requires that the recognizance shall be conditioned to prosecute the writ with effect; and in case the judgment should be affirmed, forthwith to render the defendant to prison, according to the judgment, where imprisonment has been adjudged.

THIS was a rule calling upon the defendant to show cause why he should not be again apprehended and committed to prison, notwithstanding an order of a learned judge for his discharge. The defendant, having been convicted at the Midsummer Sessions upon an indictment for misdemeanor, brought error; and on the 15th January last judgment was given against him by this court: (see 1 E. & B. 435.) The plaintiff not being present in court, the bail were called upon to produce him, in order that he might be remanded to prison; and, upon their not appearing, the recognizances were estreated. Without a new fiat of the Attorney-General, the defendant obtained a writ of error to the Exchequer Chamber; and on the 9th April, having entered into a recognizance with two sureties, before a learned judge—the condition of which recognizance was, that he would prosecute the writ of error with effect, and would personally surrender and appear in the Court of Exchequer Chamber upon the hearing of the said writ of error, and would also, in case the judgment should be affirmed, surrender himself to the said court to be further dealt with accord-

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

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ing to law,—the defendant was, by order of the learned judge, discharged out of custody. The recognizance, however, was not filed in the Crown Office until the 13th April. The rule had been obtained upon several grounds. First, that the writ of error was void, having been issued without the fiat of the Attorney-General. Secondly, that the discharge by a learned judge was improper, inasmuch as the statute made the Crown Office certificate of the filing of the recognizance in itself a sufficient warrant for the discharge; and that here the discharge took place before the filing of the recognizance, and without any justification of bail, and upon an insufficient recognizance.

Metcalfe showed cause.—The question is, whether the judge's order can be sustained. Substantially, the requirements of the statutes 8 & 9 Vict. c. 68; and 9 & 10 Vict. c. 24, s. 4, have been complied with. [WIGHTMAN, J.—What do you say to the form of the recognizance? The statute requires that the recognizance shall be conditioned “to render the defendant to prison according to the judgment;” that is, the original judgment upon the indictment.] If he surrenders, the Court of Error would at once commit him to prison. In this court, when the judgment was affirmed, the bail were called upon to produce him here.

LOLD CAMPBELL, C.J.—The Court of Exchequer Chamber is not a prison. This is certainly a very formidable objection; and renders it unnecessary to go into the others. The recognizance which is on the file of this court, and which therefore we have the opportunity of inspecting, appears to be in a totally different form from that required by the statute; and is not even to the like effect.

Clarkson applied to the court to quash the writ.

By the COURT.—We cannot do that upon this rule.

Rule absolute.

CENTRAL CRIMINAL COURT.

OCTOBER SESSION, 1852.

October 28.

(Before Mr. JUSTICE CRESSWELL.)

REG. v. COLEMAN AND OTHERS. (a)

Evidence—Comparison of handwriting—Expert.

On a trial for forgery of a bill of exchange, an expert cannot be asked whether, on comparing the signatures of the drawer, the acceptor and the indorser of the bill, he is of opinion that they are all written by the same person.

THE prisoners were indicted for forging and uttering a bill of exchange. In the course of the cause a witness, who was an artist and lithographic printer, and who declared himself able to form a judgment as to whether documents were in the same or in different handwritings, was asked the following question:—"Whether, from the knowledge and experience he had gained on such subjects, he could say whether the names of the drawer, the acceptor, and the indorser of a bill (the one alleged to be forged), which was put into his hand, were written by one and the same person?"

Parry, with whom were *Metcalf* and *Dearsley*, for the prisoners, objected to the question, inasmuch as the witness was asked to take upon himself the functions of the jury: (*R. v. Shepherd*, 1 Cox C. C. 237; *Doe v. Suckermore*, 5 A. & E. 718.)

CRESSWELL, J.—I have known inspectors of franks called to prove that documents were written in a feigned hand.

Parry.—That, no doubt, is the distinction established by all the cases; but this is nothing more than a comparison of handwriting, which has always been disallowed. He cited the *Fitzwalter Peerage Case* (10 CL & Fin. 198), and *R. v. Richards and Barber* (1 Cox C. C. 62.)

Clarkson, for the prosecution, submitted that the question was a proper one. The document was legitimately in evidence in the cause, and this was the distinctive feature of the case. It had always been held that when documents were in evidence, the jury might compare the handwriting.

Ballantine (on the same side) contended that a witness might, on a matter of science, which this clearly was, be examined. It was

(a) Reported by B. C. ROBINSON, Esq., Barrister-at-Law.

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but asking his opinion in order to assist the jury in doing what they had a right to do, but which, otherwise, they might be incompetent to do for themselves. The best evidence must be given that the matter was susceptible of, and what ground was there for saying that scientific evidence might not be given as well with respect to handwriting as to other subjects of enquiry. For instance, it had been customary to examine butchers as to whether different pieces of meat had formed portions of the same animal, and surgeons had been called to prove that different wounds had been made by the same instrument.

CRESSWELL, J.—This argument would tend to show that a comparison of handwriting generally ought to be allowed.

Ballantine said the principle might be the same, but the reason given for the exclusion of documents introduced merely for the purpose of comparison was, that such a course would introduce several issues, and therefore, as a matter of expediency and convenience, it was not permitted.

CRESSWELL, J.—Assume that there are four documents legitimately in evidence in a cause, and there is a question whether No. 4 is in the same handwriting as No. 1, there would then be no collateral issue whatever. Could you, then, call a scientific witness and ask him whether they were written by the same person?

Ballantine submitted that that might be done. If the jury were asked to form a judgment upon a matter of which they were entirely ignorant, it would be materially promoting justice to allow them the assistance of some one who was peculiarly conversant with the particular subject. Supposing it important to show that a particular pen had been used to write a certain document; surely a witness thoroughly conversant with penmanship, and who had made such matters his professional study, might be called to establish the fact in issue.

Parry was not called upon.

CRESSWELL, J.—Notwithstanding the ingenuity with which this question has been argued, I am of opinion that the question cannot be put. Argue it as we may, it eventually comes to a mere comparison of handwriting. One part of the document is proved to be in the handwriting of the prisoner; and, in substance, you ask a witness to compare the other parts with the one proved, and to say whether on such comparison he believes them to be written by the same person. The jury may compare if they will, because the document is before them; but I am of opinion you cannot give evidence on the subject.

Clarkson and *Ballantine*, for the prosecution.

Parry, *Metcalf*, and *Dearsley*, for the prisoner.

CENTRAL CRIMINAL COURT.

FEBRUARY SESSION, 1853.

February 4.

(Before Mr. BARON ALDERSON and Mr. BARON MARTIN.)

REG. v. PRIES.(a)

11 Geo. 4 & 1 Will. 4, c. 66, s. 10—*Forgery—Accountable receipt.*

On an indictment for forging and uttering an accountable receipt for goods, the following document was held to be an accountable receipt within the statute.

"By order of R. F. Pries, we have this day transferred into the name of Messrs. Collman and Stolterfoht, 759 quarters and 4 bushels of wheat, ex. August Ferdinand, Captain Richards, à Neustadt.

"Entered by R. F. Pries, and now lying at our granaries, Bermondsey-Wall. The wheat is insured against risk of fire by us.—BROWN and YOUNG. Corn Exchange, October 23, 1852."

THE prisoner was indicted for feloniously forging and uttering the following accountable receipt for goods:—

"By order of R. F. Pries, we have this day transferred into the name of Messrs. Collman and Stolterfoht, 759 quarters and 4 bushels of wheat, ex. August Ferdinand, Captain Richards, à Neustadt."

"Entered by R. F. Pries, and now lying at our granaries, Bermondsey-Wall."

"The wheat is insured against risk of fire by us.

BROWN and YOUNG."

"Corn Exchange, October 23, 1852."

Huddleston, for the prisoner, submitted that this document was not an accountable receipt within the statute. It merely purported to be a memorandum of the transfer of goods by Brown and Young, but it was no evidence of the receipt of goods. It was an assertion on the part of Brown and Young, that they had "transferred" from A. to B., but not that they had "received" from either of them. Whether the document were genuine or not, the warehouseman would be answerable to the real owner. He cited *Harvey's case* (R. & R. 227); *Clark v. Newsam* and

(a) Reported by B. C. ROBINSON, Esq., Barrister-at-Law.

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Edwards (16 L. J. Ex. R. 296); *R. v. West* (2 Cox C. C. 437 ; 2 Car. & Kir. 496); S. C. (*Clarke v. Chaplin* 1 Ex. Rep. 26.)

Ballantine (with whom were *Parry* and *Holl*), for the prosecution, was not called upon.

ALDERSON, B.—I am clearly of opinion that this is an accountable receipt within the statute. It purports that on the 23rd October, Brown and Young had goods belonging to the prisoner in their granaries, which they had received from him for the benefit of Collman and Stolterfoht, and that they, Brown and Young, held themselves accountable to Collman and Stolterfoht for such goods. It is true, the word “receipt” is not named throughout the document, but it is sufficient that it appears to be a receipt in substance.

MARTIN, B. concurred.

Ballantine, Parry and *Holl*, for the prosecution.

Huddleston for the prisoner.

COURT OF QUEEN'S BENCH.

SITTINGS AT NISI PRIUS AFTER MICHAELMAS TERM, 1852.

December 1 and 2.

(Before LORD CAMPBELL, C.J.)

REG. v. HAMP AND OTHERS. (a)

Conspiracy to defeat the ends of justice by abstaining from a prosecution—Indictable misdemeanor—Evidence—Notice to produce—Privilege of wife to refuse to answer questions as to the residence of her husband, who is liable to be apprehended.

An agreement with other persons by a witness who has been bound over to prosecute and give evidence on an indictable misdemeanor, not to appear on the trial, is an indictable offence, as being an agreement to obstruct the due course of law and justice; and the indictment may allege that to have been the object of the defendants, although their immediate intention had no reference to the obstruction of justice, but was simply to extricate themselves from a scrape, and the defeat of justice was merely the effect of the conspiracy. Therefore, where H., having upon oath charged B. with fraud, and being bound over to prosecute, was subsequently induced to make an affidavit of B.'s innocence, and H. and his friends, in order to avoid the consequences of B.'s contradictory statements on oath, agreed, upon receiving a cheque from B.'s wife for a sum nearly equal to the amount of H.'s recognizances, to forfeit those recognizances by abstaining from prosecuting, and also to return the amount of the cheque if H. was not called upon his recognizances:

Held, that the facts supported an indictment charging H. and his friends with a conspiracy to obstruct and defeat the due course of law and justice; but

Held, that the facts did not support counts in the indictment, charging the conspiracy to be to obtain the money from the wife of B., and to cheat and defraud him of the same.

Notice to produce the cheque served at the office of the London agents for the country attorney of the defendants at 3 p.m. the day before the commencement of the trial:

Held, sufficient to let in secondary evidence of its contents:

Held, also, that such secondary evidence was admissible, although it appeared that the cheque had been seized by the sheriff under a levy upon the effects of H. for the amount of the estreated recognizance.

B., having been admitted to bail to answer the charge of H., did not surrender to take his trial, but absconded:

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

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Held, that his wife, who was examined as a witness on the indictment against H. and others for conspiracy, might refuse to answer a question whether she had not seen her husband at a particular time and place, she having assigned as a reason for not answering it, that her husband had not appeared upon his recognizance.

INDICTMENT against William Hamp, William Watkins, and Charles Probert for conspiracy. The indictment contained seven counts. The first count alleged that before the commission of the offence thereafter mentioned, Charles Staden, John James, and John Broome had been charged before a justice of the peace of the borough of Brighton, in the county of Sussex, on suspicion of having, by cheating and false pretences, obtained divers large sums of money, amounting to 300*l.* from William Hamp, and that they had been committed to prison to take their trials at the next assizes in respect of the said offence, and that William Hamp was bound over by recognizances to appear and prosecute. The count then proceeded to allege that afterwards, and while the said charge was pending, and before the trial of the same, to wit, on the 16th day of March, A.D. 1852, the said William Hamp, William Watkins, and Charles Probert, well knowing the said charge to have been made, and the said trial to be then pending, and corruptly and unlawfully contriving and intending to defeat and obstruct the due course of law and justice, did agree amongst themselves, and with Mary Ann the wife of the said John Broome, that the said charge should not be prosecuted, that the said William Hamp should not attend to prosecute or give evidence upon the said ensuing trial, and that the said William Hamp should receive, in consideration thereof, the sum of 400*l.* of and from the wife of the said John Broome. The count then averred that on the day and year aforesaid, the said William Hamp did receive of and from the said wife of the said John Broome, a certain valuable security, to wit, an order for the payment of money, to wit, for the payment of the said sum of 400*l.*, and did go out of the way to avoid prosecuting the said charge, and that the said William Watkins and Charles Probert did aid and assist him in so doing, to the great obstruction of justice, and against the peace, &c.

The second, third, and fourth counts varied some of the allegations; but in all of these counts, the object of the conspiracy was alleged to be to defeat and obstruct the due course of law and justice.

In the fifth, sixth, and seventh counts, the conspiracy was alleged to be to obtain from the wife of John Broome a large sum of money, his property, and to cheat and defraud him of the same.

Mr. Staigt, the deputy clerk of assize, produced the indictment against John Broome and others, found at the Spring Assizes at Lewes. The witness also produced the recognizances in 500*l.*, entered into by the defendant Hamp to prosecute at those assizes. Hamp did not appear, and his recognizances were forfeited. Upon a cross-examination, the witness said that the sheriff levied for the amount, and under it seized the cheque for 400*l.* referred

to in this indictment. Staden and James appeared at the Summer Assizes, and were tried and convicted; but John Broome did not appear. The gaoler of Lewes produced the commitment of Staden, James and John Broome.

Proof was given of personal service on the defendant Watkins of a notice to produce the cheque mentioned in the present indictment. With respect to the defendant Probert, the service was at his house, in Herefordshire, on Monday, the 29th of November, after he had left for London, to attend this trial. His daughter, who received the notice, said it should be forwarded to her father. Notice to produce was also served at three o'clock in the afternoon of the 30th of November (the day before the trial) at the office of the London agents for the country attorney for the defendants Probert and Hamp. Watkins had been personally served. Upon this evidence,

Parry, for the prosecution, proposed to give secondary evidence of the contents of the cheque. In addition to the notice to produce, he urged that the indictment was itself sufficient notice.

Sir A. Cockburn, for the defendant Probert, submitted that the notice was not sufficient. In the one case, it was served after the defendant had left for London; in the other, it was only the day before, at three o'clock in the afternoon. Moreover, in this case, the cheque was not in the defendant's possession. It had been seized by the sheriff.

Wilkins, Serjt., was also heard to the same effect for the defendant Hamp.

LORD CAMPBELL, C. J.—I am of opinion that secondary evidence may be received.

Wilkins pressed the objection that the cheque was in the hands of the sheriff.

LORD CAMPBELL.—I have taken all that into consideration, and am of opinion that secondary evidence may be received.

Mary Ann Broome was then examined.—She stated that she was the wife of John Broome, a publican in Ayr-street, Piccadilly. A charge was preferred against him and other persons for cheating at cards, at Brighton, and it stood for trial at the Lewes assizes, last March. Prior to that time, the witness had known the defendants Hamp and Watkins, and the former had been staying at John Broome's house for a considerable time about the month of August 1851. On the evening of the 15th of March, the witness, in consequence of a message from Henry Broome, her husband's brother, went to the Exeter Tavern, in the Strand, and there saw all the defendants, Henry Broome being with them. Watkins or Hamp said they had come to prosecute John Broome. The witness stated her surprise at Mr. Hamp's doing so, as he had often expressed himself to the effect that her husband was innocent. The defendants said they were sorry to carry on the prosecution; but if witness would give them 500*l.* they would not do so. On her saying that she had not so large a sum, they said the case must proceed. After some conversation among them—

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selves they left the room, and on their return said they would take 400*l*. The witness said it was a large sum, and she had not got it; but she had some deeds of property, held by her in her own right, and handed one to Mr. Probert. He said it was of no use, and they must have money, for Mr. Hamp had none, having been put to great expense in the matter. The witness then arranged to meet the defendants the following morning, and did so. A Mr. Fisher was then present, and the witness received a cheque for 400*l*. from him, on a deposit of her deed, and handed the cheque to Hamp, who thereupon told her to make herself contented, as the matter was at rest, and they would not further prosecute her husband, and the cheque was handed to Mr. Probert. Watkins wrote the following memorandum, which was signed by Hamp, and delivered to the witness: "I agree, if I am not called upon my recognizance on the prosecution against John Broome, to return the 400*l*. which I have received to cover my recognizance."

The witness was cross-examined by the several counsel for the defendants, to show that John Broome was a participator in defrauding Hamp of a considerable sum at Brighton races, in 1851. It appeared that he had forfeited his recognizance by not surrendering to be tried, and had not returned home since.

In the course of cross-examination by *Wilkins*, Serjt., to elicit where John Broome, the husband, then was, the witness having said that he was abroad, she was asked whether she had not seen her husband at the house of her brother-in-law, at Birmingham, a few days before the present trial? The witness said she would rather not answer.

LORD CAMPBELL, C. J., said she must answer, or give some reason for not answering.

The witness then said, "I decline to answer the question, because my husband did not appear to his recognizance."

LORD CAMPBELL, C. J.—I think on that the question ought not to be pressed.

The question was accordingly withdrawn.

Henry Broome, a prize-fighter, and John Broome's brother, confirmed the statement of Mary Ann Broome. On the 15th of March he met the three defendants in Fleet Street. Watkins said he had come up to prosecute the Brighton card case, and inquired where John Broome was. On the witness stating that he did not know, the defendant inquired for Mrs. Broome, and desired the witness to tell her to meet them at the Exeter Tavern, that evening. Having done so, the witness went at the time appointed, and saw the three defendants in a private room. Mrs. Broome and Fisher came in. The former asked Hamp how he could think of prosecuting her husband, as he had repeatedly told her that her husband was innocent. Hamp said, "I am aware of that, but I am bound over in my recognizances in 500*l*. to prosecute, and if you will give me that amount, I will go away, and not prosecute him any more." Mrs. Broome said it was a serious

sum of money, and she showed him two dishonoured cheques he had given her husband, and stated that he was in their debt 100*l.* besides, for a tavern bill. Upon this the defendants went into an adjoining room, where they remained some time, and then Watkins said they would take 400*l.*, and no less; and if she would give it, Hamp would go away, and never prosecute her husband any more, but if she did not give it, he must stop and prosecute. She went out, and on her return produced a deed, which Mr. Hamp or Mr. Probert looked at, and said it was of no use to them: they must have the money. They then gave her until eleven o'clock the next morning to get the money. Witness attended the following day, and saw Fisher hand Mrs. Broome a cheque for 400*l.*, which she handed to Hamp, who gave it to Mr. Probert. He put it in his waistcoat pocket, saying the matter was at an end, and that he and Hamp would go to Boulogne at three o'clock in the afternoon. Watkins, in the meantime, left the room, and when he came back, said he had telegraphed to Birmingham to know if the cheque would be paid, and that it was all right, provided it was properly drawn. Richard Fisher proved that he gave his cheque for 400*l.* to Mrs. Broome, and received some deeds from her as security. On cross-examination he said that John Broome came to him that afternoon, and desired him to stop the payment of the cheque. The witness did so, and consequently it had never been paid, but remained in Mr. Hamp's possession until seized by the sheriff.

A witness from Boulogne stated that she saw Hamp there a few days after the 15th of March, and he told her he was there to be out of the way to avoid prosecuting John Broome.

Cockburn addressed the jury for the defendant, the Rev. Mr. Probert, who was the guardian of the defendant, William Hamp, and his brother, John Hamp, two young men, who, possessed of property, had by a course of folly and extravagance, spent the whole of it. Hamp, the defendant, had been cheated at cards by John Broome and his companions, who were held to bail for the offence, and Hamp bound over by recognizances in the sum of 500*l.* to prosecute, but such was the influence of Broome over Hamp, that the latter subsequently made an affidavit exculpating Broome from any participation in the fraud. Hamp was thus placed in the dilemma that if he did not go to the assizes and prosecute he would forfeit his recognizance; and if he did go he would be met by his own affidavit, and would be, no doubt, indicted for perjury. Under these circumstances Mr. Probert, anxious to extricate his ward from this painful position, became, no doubt, indiscreetly a consenting party to the compromise, but without any intention to do wrong. The indictment contained two classes of counts. The first alleged a conspiracy to obstruct and defeat the ends of justice, and the second class charged a conspiracy to cheat and defraud John Broome.

LORD CAMPBELL, C.J. interposed, and said he thought the second class of counts was not supported by the evidence.

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Cockburn submitted that the evidence also failed with respect to the first set of counts. There was clearly no intention in the mind of Mr. Probert to obstruct the course of justice. The question is not whether that was or was not the effect of the conspiracy, or whether the conspiracy led to that result, but the question is what was the intent of the parties?

LORD CAMPBELL, C.J.—If the necessary effect of the agreement was to defeat the ends of justice, that must be taken to be the object.

Cockburn submitted that the *animus* must be taken into consideration. The jury must be satisfied that the parties had that intent at the time. What were the circumstances? The defendants were acting under the belief that they could not convict Broome in consequence of Hamp's contradictory statements, and that he was in this dilemma, that he was himself liable to an indictment for perjury. The object therefore was, not to defeat the ends of justice, but to protect Hamp, whose recognizances on the one hand would be forfeited if he did not appear to prosecute, and he be deprived of every shilling, or else if the prosecution was followed, he was open to a prosecution for perjury.

Skinner and *Hawkins* addressed the jury on behalf of the two other defendants.

LORD CAMPBELL, C.J. in summing up said, the prosecution was one of the most important that could come before the jury, for it was of the highest moment that the stream of justice should not be impeded, but be allowed to flow undisturbed. It sometimes happened that witnesses for a prosecution were bought off, and the ends of justice defeated; and when that was clearly established, the jury were bound to find a verdict of guilty. In this case the accusation was in substance that there being a charge against three persons, Staden, James, and Broome, for defrauding William Hamp, the defendants entered into a conspiracy to prevent Hamp from giving evidence on that charge. The first count alleges that Charles Staden, John James, and John Broome, were charged with obtaining by cheating and false pretences 300*l.* from William Hamp, and were committed to take their trials at the next assizes for that offence, and that Hamp was bound over to prosecute. The count then alleges that before the trial, the defendants intending to defeat and obstruct the due course of law and justice, conspired with the wife of Broome that the said charge should not be prosecuted, that Hamp should not attend to prosecute or give evidence, and that he should receive in consideration the sum of 500*l.* from Mrs. Broome.

Huddleston (for Probert) interposed, and said that the first count did not charge a conspiracy.

LORD CAMPBELL, C.J.—It says "agreed." Nothing turns on that. Conspire is nothing; agreement is the thing. The count then alleges that Hamp did receive an order for the payment of 400*l.*, and did go out of the way to avoid prosecuting the charge, and that the other defendants assisted him in so doing. In the

second count the charge was slightly raised, but was in substance the same as the first count. The third count charged the defendants with conspiring and agreeing together to obstruct and defeat the due course of law and justice, and to obstruct and prevent the prosecution of the said charge; and alleged that, in pursuance of that conspiracy, Hamp corruptly absented himself, and received the cheque for so doing. The fourth count charged the conspiracy, but did not allege any act of the defendants to carry out that conspiracy. The jury were to say, on the first and second counts, whether the defendants did agree not to prosecute, as therein alleged, and on the third and fourth counts, whether they conspired to obstruct and defeat the ends of justice. If they did so agree and conspire, whatever might be their private reasons, it was the duty of the jury to convict the defendants. His Lordship then went through the evidence, and observed, that the fact of the cheque not having been paid was immaterial, for the offence, if committed at all, was complete when the cheque was delivered and received.

The jury returned a general verdict of Guilty, but strongly recommending the defendants to mercy, on the grounds that they were themselves the victims of a base and infamous conspiracy.

Judgment deferred.

Parry and Metcalfe for the prosecution.

Sir A. Cockburn and *Huddleston* for the defendant Probert.

Wilkins, Serjt., and *Skinner* for Hamp.

Hawkins and *Henry James* for Watkins.

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COURT OF QUEEN'S BENCH.

May 7, 1853.

(Before LORD CAMPBELL, C.J., WIGHTMAN, ERLE, and CROMPTON, JJ.)

REG. v. ARTHUR HILLS.(a)

*Indictment—Certiorari—Costs—Attachment for nonpayment—
Estreating recognizance.*

The defendant, having been convicted of misdemeanor upon an indictment which he had removed into this court by certiorari, the judgment was respited by consent, upon an agreement by the defendant to pay the taxed costs immediately. The costs were taxed at 227l. ; the defendant became bankrupt, and the prosecutor proved for that amount under his bankruptcy. Judgment was afterwards entered up, and the costs of the prosecution again taxed under the 5 & 6 Will. & M. c. 11, at 243l. Upon a rule for an attachment against the defendant for nonpayment of that sum pursuant to the Master's allocatur, and to estreat the recognizances into which the bail had entered, the court estreated the recognizances, but discharged the rule for an attachment.

THIS was an indictment for a nuisance in using a vitriol manufactory, which the defendant had removed into this court by certiorari. It was tried in March, 1851, when a verdict of guilty was entered, subject to an arrangement whereby certain chemists were to report whether the manufactory could be carried on so as not to be a nuisance; and ultimately they reported that it could not. It was, however, agreed that judgment should still be respited, upon the defendant paying immediately the costs of the prosecution up to that time, which were then taxed by the Master of the Crown-office at 227l. The defendant, however, did not pay that amount, but executed a bill of sale of his property, and in February, 1852, became bankrupt. Under his bankruptcy the prosecutors proved for the sum of 227l. but afterwards entered up judgment upon the indictment, and obtained a side-bar rule for the costs of the prosecution under 5 & 6 Will. & M. c. 11. Under that rule the Master again taxed the costs, notwithstanding the protest of the defendant; and the amount of his *allocatur*, including the previous sum of 227l., was 243l. That amount having been demanded, and payment refused, a rule *nisi* had been obtained

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

calling upon the defendant and his bail to show cause why an attachment should not issue against him, and why the recognizance entered into by him and his bail pursuant to the statute, should not be estreated.

M. Chambers, and *Bramwell*, showed cause.—First, the prosecutors who apply do not show that they are the parties grieved; and the stat. 5 & 6 Will. & M. c. 11, s. 3, only gives the costs to prosecutors who are also parties grieved. [CROMPTON, J.—You should have moved to set aside the side-bar rule, if you meant to take that point. The officers of the court say that it is not the practice to have an affidavit that the prosecutors are parties grieved upon this application.] Secondly, the proof under the bankruptcy is equivalent to payment. Thirdly, as to the bail, the recognizance does not in form impose any liability to pay costs; and though, by construction of the statute, the principal has been held liable to the costs, the sureties are not. [CROMPTON, J.—In *R. v. Hodgson*, 21 L. J. 181, M. C., the bail were held liable.(b)] At all events the bail are sureties only; and here, by reason of the proof under the bankruptcy, there has been no failure on the part of the principal. [CROMPTON, J.—He has not performed the condition of the recognizance, though he may have acquired a personal exemption.]

Bovill, contra.—The prosecutors have a strict legal right to these costs under the stat. 5 & 6 Will. & M. c. 11. The proof under the bankruptcy took place before judgment was signed, and applies only to the sum of 227*l.*, the right to which depended solely upon a bargain which the defendant did not perform. The right to the sum of 243*l.* depends upon the statute, and is a right altogether irrespective of the previous bargain. [ERLE, J.—But that includes the sum of 227*l.*, and the proof under the bankruptcy discharges the bankrupt from the whole of the debt proved. WIGHTMAN, J.—Suppose there had been a dividend; could you still have claimed an attachment for non-payment of 243*l.*?] The prosecutors are entitled to enforce payment of the whole amount; but if they had received any part, they would of course be bound to give credit for so much.

LORD CAMPBELL, C.J.—We think that the attachment ought not to issue against the defendant, but the recognizance may be estreated for the purpose of proceeding against the bail.

Rule discharged as to the attachment; but absolute for estreating the recognizance.

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(b) See also *R. v. Toal*, 13 East, 4; *R. v. Hawdon*, 1 Q. B., Rep. 464.

COURT OF QUEEN'S BENCH.

January 27, 1853.(Before LORD CAMPBELL, C.J., COLERIDGE, J., and
WIGHTMAN, J.)

REG. v. ARCHIBALD WILSON. (a)

*Indictment—Certiorari—Costs—Prosecutor—Stat. 5 & 6 Will. & Mary,
c. 11, s. 3.**The Lord Mayor of London having committed the defendant for trial at the Central Criminal Court upon a charge of misdemeanor, directed the city solicitor to conduct the prosecution, the expenses of which were defrayed out of the city funds. The defendant removed the indictment into this court by certiorari, and was convicted.**Held, that the Lord Mayor, not being personally liable for the expenses of the prosecution, was not entitled, as prosecutor, to recover the costs from the defendant under the provision of statute 5 & 6 Will. & Mary, c. 11, s. 3.**In order to bring the case within that statute, there must be a prosecutor personally liable for the expenses.*

A RULE had been obtained, calling on the prosecutors of this indictment to show cause why the side-bar rule for taxing the costs of the prosecution to be paid by the defendant to the prosecutor should not be set aside. The indictment, which was for an indecent assault, was found at the Central Criminal Court, and removed by *certiorari* by the defendant into this court. The Lord Mayor of London had originally committed the defendant upon the charge, and directed the city solicitor to conduct the prosecution, according to a common practice in the city with regard to cases where, otherwise, there might be reason to apprehend a failure of justice. The prosecution was accordingly conducted by the city solicitor, and the expenses were paid, as usual in such cases, out of the city funds. The defendant was convicted, and then a side-bar rule for taxation of the costs was obtained by the prosecution, pursuant to stat. 5 & 6 Will. & M. c. 11, s. 3.

Hugh Hill now showed cause against the rule for setting aside that side-bar rule. The Lord Mayor was an officer whom it concerned to prosecute, within the intention of the statute, according

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

to the rule laid down in the *Anonymous case* (15 Q. B. Rep. 1060; S. C., 4 Cox C. C. 345); and *R. v. The Earl of Waldegrave*, (2 Q. B. Rep. 341.) (a) [COLERIDGE, J.—But is not the statute intended to indemnify prosecutors who would otherwise be liable to the costs? I recollect the case of a young surgeon who was prosecuted under the Resurrection Act; and there the expenses were defrayed by subscription, and on that ground it was held that the costs could not be recovered from the defendant under this statute.] (b)

Hugh Hill.—Some earlier cases, narrowing the operation of the statute (*R. v. Dewhurst*, 5 B. & Ad. 405; and *R. v. Edwards*, *ib.* 407, note a) were disapproved of in *R. v. Waldegrave*.

Sir F. Thesiger, *contra*, was not called upon.

LORD CAMPBELL, C. J.—I regret that we have not the power to require the defendant to pay the costs of this laudable prosecution, which ought to fall upon him; but we must be governed by the rules of law; and we have no authority to impose these costs unless the case falls within the stat. 5 & 6 W. & M. c. 11, s. 3. Now that statute was clearly meant to indemnify prosecutors who would have to pay the costs if the defendant did not; and it is admitted in this case that the Lord Mayor was not personally liable, but that the costs were defrayed out of the funds of the city. In the *Anonymous case* referred to, the guardians of the union would have been personally liable; and therefore there is no inconsistency between that and the case mentioned by my brother Coleridge, in which it was decided that the object of the statute was to indemnify the prosecutor, and protect him only from the payment of costs which he would otherwise have to bear

COLERIDGE, J., and WIGHTMAN, J. concurred.

Rule absolute.

(b) In that case the Commissioners of the Metropolitan Police prosecuting for an assault upon one of their officers, were held entitled to recover their costs from the defendant under stat. 5 & 6 W. & M. c. 11, s. 3.

(c) *R. v. Cook* (1 Man. & Ry. 526.) The indictment, which was for disinterring dead bodies, was removed by *certiorari* from sessions at the instance of the defendant, who was afterwards convicted. A side-bar rule for taxation of the costs under stat. 5 & 6 W. & M. c. 11, s. 3, obtained by the parish officers who prosecuted, was set aside, because the affidavits disclosed that the expenses of the prosecution had been defrayed by subscription.

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CENTRAL CRIMINAL COURT.

JANUARY SESSION, 1853.

January 6.

(Before WILLIAMS, J., and TALFOURD, J.)

REG. v. CONNELL. (a)

7 Will. 4 & 1 Vict. c. 85, ss. 3, 5—14 & 15 Vict. c. 100, s. 9—*Murder—Administering poison with intent to murder—Autrefois acquit—Pleading.*

Upon an indictment under the 7 Will. 4 & 1 Vict. c. 85, ss. 3, 5, for administering poison with intent to murder, a previous acquittal on an indictment for murder founded on the same facts cannot be pleaded in bar.

THE prisoner was indicted under 7 Will. 4 & 1 Vict. c. 85, ss. 3, 5.

The 1st count was for feloniously administering to George William Lapham a certain destructive thing, namely, four drachms of vitriolic acid, with intent to murder him.

2nd count, for attempting to administer the same.

3rd count, for applying the same acid with intent to burn him.

4th count, for applying the same with intent to do him grievous bodily harm.

The prisoner had been indicted and tried at a former session for the murder of the said George William Lapham, who was an infant, and to whom it was alleged the prisoner, being his nurse, had administered a quantity of vitriolic acid, and so caused his death. There was some doubt however upon the trial, whether the death had been caused by the acid or by merely natural causes, and the learned judge who tried the case directed an acquittal, but ordered that a fresh indictment should be preferred against the prisoner, for an attempt to murder.

This was done, and on the prisoner being called upon to plead, the following plea was handed in.

“ And the said Jane Connell, in her own proper person, cometh into court here, and having heard the said indictment read, saith that, as to the first and second counts of the said indictment, our Lady the Queen ought not further to prosecute the same against her the said Jane Connell, because she saith that heretofore, to wit, on the

(a) Reported by B. C. ROBINSON, Esq., Barrister-at-Law.

2nd day of November, A.D., 1852, at a session of the Central Criminal Court, holden in the city of London, in and for the district of the Central Criminal Court, before Sir Edward Hall Alderson, Knight, one of the Barons of the Exchequer of our said Lady the Queen (and other justices), she the said Jane Connell was lawfully acquitted of the offences charged in the said first and second counts of the said indictment; and this the said Jane Connell is ready to verify, and therefore she prays judgment, and that by the court here she may be dismissed and discharged from the said premises in the first and second counts of the present indictment specified. And as to the first, second, third, and fourth counts of the said indictment, she the said Jane Connell saith that she is not guilty."

To this plea the following replication was put in:—

"And John Clark, clerk of the said court, who prosecutes for our said Lady the Queen in this behalf, having heard the said plea of the said Jane Connell by her above pleaded, as to the first of the said pleas saith that our said Lady the Queen ought not, by reason of anything therein alleged, to be barred or hindered from further prosecuting the said indictment against the said Jane Connell, because the said John Clark who prosecutes as aforesaid, says that there is no record of the supposed acquittal aforesaid, at the said session of the Central Criminal Court, as she the said Jane Connell, in pleading as above, has alleged; wherefore he prays judgment for our said Lady the Queen. And, as to the plea of the said Jane Connell, whereof she has put herself upon the country, he the said John Clark, on behalf of our said Lady the Queen, doth the like."

Sleigh (*B. Thomson* with him, for the prisoner) submitted that this form of replication was insufficient, as being an argumentative denial of the plea.

WILLIAMS, J.—Then your proper course is to demur.

Sleigh said he ought not to be compelled to demur to an obviously informal replication, because, by so doing, the facts stated in the replication would be admitted.

WILLIAMS, J., refused to entertain the question in any other form.

Sleigh then contended that this was an issue which the jury were to try.

WILLIAMS, J.—I do not think so; the issue is for the court, and it is for you to produce the record on which you rely.

Sleigh then put in the record of the prisoner's acquittal for the murder of the child. He submitted that under the 14 & 15 Vict. c. 100, s. 9, the jury, upon the former indictment, might have found the prisoner guilty of attempting to commit the murder with which she was then charged, although they acquitted her of the actual murder. No doubt the charge in the present indictment was not precisely the same in words as the attempt to murder, but if it was the same in substance it would prevent her from being tried a second time. In a case of murder, for instance, a prisoner might be convicted for manslaughter, although no such charge was contained in the indictment.

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—Pleading.

TALFOURD, J.—Do you contend that under the first indictment the prisoner might have been convicted of the statutable felony now charged?

Sleigh submitted that, substantially, that might have been done. Administering with intent to murder, was in truth an attempt to murder; and of the latter she might clearly have been convicted. The administering with intent to murder was not in reality a new offence. It was well known to the common law, although now defined and rendered of a more serious character by statute. The question was, had the prisoner been in jeopardy on the former trial, with respect to the facts now charged, and the answer must be that she had. The word “attempt,” in the 9th section, was to be taken in its broad and general sense, and included all those offences comprised in the principal one, but which fell short of its completion.

Clarkson (for the prosecution) did not dispute the proposition that under the former indictment the prisoner might have been convicted of an attempt to murder, but that attempt would have amounted only to a misdemeanor, which was a totally different offence to the present one. The 9th section of the statute was intended to provide for the non-escape of persons charged with felony, which felony included a misdemeanor, and could not have been intended to preclude a prisoner acquitted of an aggravated felony from being afterwards indicted for another felony of a less serious character. This was evident from the 11th section of the same statute. An assault, with intent to rob, was, before the statute, a felony, although it was an attempt to commit the offence of robbery with violence; but, if a conviction for this offence could have taken place on an indictment for the robbery, the 11th section would have been utterly useless. Its language clearly implies that without it an acquittal of the robbery could not have been pleaded to an indictment charging a felonious assault. So, in the present case, although the administering with intent to murder might be an attempt to murder, still it was made specifically a statutable felony; and, as such, was not an offence included in the previous charge of murder.

Sleigh (in reply).—The 11th section was framed to meet the case of *R. v. Reid* (5 Cox Crim. Cas. 104), and was rather an exposition of the principle of the 9th section than an exception to it.

WILLIAMS, J.—It has not been contended on the part of the prisoner that she could, at common law, have been convicted under the former indictment of the charge contained in the first and second count of the present one; but it is said that she was in jeopardy because she might have been convicted of an attempt to murder under the 9th section of 14 & 15 Vict. c. 100. I am of opinion that she was in no such jeopardy, for that section would only enable the jury to convict of the attempt, which would be simply a misdemeanor. Upon the record, therefore, there would appear nothing more than a conviction for a misdemeanor,

and there would be no authority for any such punishment as the statute under which this indictment is framed, has awarded. The 11th section seems to me entirely to confirm this view of the case, and my judgment must, therefore, be for the Crown.

TALFOURD, J., concurred. (b)

Clarkson, for the prosecution.

Sleigh and Thomson, for the prisoner.

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Murder—
Autrefois acquit
—Pleading.

(b) I am indebted to the Deputy Clerk of the Arraignment of the Central Criminal Court for the substance of the following note as to the nature of the pleadings in the above case, and the course taken on the part of the prosecution. The subject is important, inasmuch as this is believed to be the first case that has occurred of a plea of *autrefois acquit* under Lord Campbell's Act.

By the 14 & 15 Vict. c. 100, s. 20, it is enacted that "in any plea of *autrefois convict* or *autrefois acquit* it shall be sufficient for any defendant to state that he has been lawfully convicted or acquitted (as the case may be), of the said offence charged in the indictment."

Previously to the passing of that act, it had been the universal practice in modern times that the substance of the alleged record should be set out in the plea of *autrefois acquit*, and several courses were open to the prosecutor in answer thereto. If there was in truth no such record, or an existent record were incorrectly set forth, he might simply deny its existence, and they would be triable by the court. If an existing record were correctly set out, but it did not apply in point of fact to the offence to which it was pleaded, the Crown would traverse the identity of the offences, and this issue would be submitted to the jury. Again, an existing record might be correctly set out, and the identity of the facts could not be disputed, but the indictment so set forth might be bad on the face of it, or the felony of which the prisoner had been acquitted might be of a different nature to the one contained in the indictment pleaded to, so that he had never been in jeopardy before with respect to the immediate charge. In such a case the proper course would have been to demur to the plea. The court would then see in the one case that in consequence of the insufficiency of the former indictment no judgment could have been given upon it; in the other, having both indictments before them, they would perceive that the offences charged in them were of a different nature.

Now, however, in consequence of its being no longer essential to set out the record in the plea, the course of proceeding is necessarily different, and the Crown must either reply generally that there is no such record of acquittal as is mentioned in the plea, or must craveoyer of the record, set it out, and then demur to its sufficiency. The former course was adopted in the above case, and had the prisoner demurred, it would have been argued that although the plea did not in express words set out the record, yet it set forth matter *quasi* of record, and only proveable by the record, and that, therefore, the replication did in substance, and not argumentatively, deny the plea. Had the court decided, however, that the replication was bad, the Crown would have asked leave to amend, or would then have cravedoyer of the original record (see 2 Hale P. C. c. 31, p. 241, and c. 32, p. 255), and have demurred to the plea.—REPORTER.

COURT OF CRIMINAL APPEAL.

MAY SESSION, 1853.

May 19.

(Before the COMMON SERJEANT.)

REG. v. PARTRIDGE. (a)

False pretences—Inferring pretence from conduct.

The London and Brighton Railway Company were in the habit of advancing small sums of money to persons sending goods to be carried by their railway on the faith of receiving such sums from the consignee on the delivery of the goods to him. The defendant went to the principal railway station, and gave to a clerk there a card, on which was written "Case to Brighton, 11s. 9d. to pay;" at the same time requesting that the case might be sent for to a certain tavern, and forwarded to its destination. The card was, in the ordinary course of business, sent to the goods station of the company with the message left by the defendant, and the manager there, directed a carman to fetch the case from the tavern and to pay the 11s. 9d. This was done. The case was sent to Brighton, but the address written upon it was found to be a fictitious one, and, on opening the case, it was found to contain nothing but brickbats and other rubbish.

Held, that these facts did not support an allegation of a false pretence that the box contained certain valuable articles.

THE prisoner was arraigned upon the following indictment for obtaining money under false pretences: (b)

Central Criminal Court, } The jurors for our Lady the Queen
to wit. } upon their oath present, that heretofore and at the time of the committing of the offence hereinafter next mentioned, J. P., late of London, labourer, had left and deposited with one J. F. a certain box, bearing thereon a certain address and direction, then and there importing and intending to import that the said box was to be delivered to a certain person at Brighton, in the County of Sussex. And the jurors aforesaid, upon their oath aforesaid, do further present that the said J. P. afterwards, to wit, on the 15th day of March, A.D., 1853, in

(a) Reported by B. C. ROBINSON, Esq., Barrister-at-Law.

(b) The indictment was drawn by Mr. Straight, of the Central Criminal Court, and although the facts disclosed in evidence were held not to support it, it may still be useful as a precedent in somewhat analogous cases.—REPORTER.

London aforesaid, and within the jurisdiction of the said Central Criminal Court, did make application to a certain railway company called the London, Brighton and South Coast Railway Company, to carry and convey the said box to Brighton aforesaid, and there to deliver the same according to the address and direction thereon for reward to the said London, Brighton and South Coast Railway Company on that behalf, and further to advance to him, the said J. P., the sum of 11s. 9d. on the security of the said box and the contents thereof.

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And the jurors aforesaid, upon their oath aforesaid, do further present that the said J. P., devising, contriving and intending to deceive the said company, and to cheat and defraud them of their moneys to the amount aforesaid, did then and there unlawfully, knowingly and designedly, falsely pretend to one F. G. then and there being a person employed in the service of the said company, that the said box then and there contained certain valuable articles, that he the said J. P. was then lawfully entitled to demand and receive the said sum of 11s. 9d. for the said box and the contents thereof, from the person to whom the same so imported to be directed as aforesaid, and also to confer on the said company the said right to demand and receive the said money, on the delivery by them of the said box and the contents thereof, according to the said address and direction; by means of which said false pretences he the said J. P. afterwards, to wit, on the same day and in the year aforesaid, in London aforesaid, and within the jurisdiction of the said Central Criminal Court, unlawfully, knowingly and designedly, did fraudulently obtain of and from the said London, Brighton and South Coast Railway Company, divers of their moneys, to wit, to the amount of 11s. 9d. aforesaid, with intent then and there to cheat and defraud them of the same: whereas, in truth and in fact, the said box did not then contain any valuable articles, as the said J. P. so falsely pretended as aforesaid; and whereas, in truth and in fact, the said J. P. was not then lawfully entitled to demand or receive the said sum of 11s. 9d. for the said box and the contents thereof, as the said J. P. so falsely pretended as aforesaid, from any person whatever, or to confer on the said company the said right to demand or receive the said money, on the delivery by them of the said box and the contents thereof, according to the said address and direction; and whereas the fact really was and is, that the said box contained articles only of a worthless description, and no articles of value whatever, as he the said J. P. then and there well knew, and was falsely and deceitfully made to represent and pass for a box containing articles of value, for the purpose of inducing and persuading the said company to advance their said moneys on the security thereof, and thereby enabling the said J. P. to cheat and defraud them of the same, and for no honest purpose whatever; against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

Second Count.—And the jurors aforesaid, upon their oath afore-

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said, do further present that heretofore, and before and at the time of the committing of the offence hereinafter next mentioned, the said J. P. had caused to be left and deposited at a certain booking-office, to wit, at a certain public-house and inn called the Three Nuns, in Aldgate, in London aforesaid, a certain other box bearing a certain address and direction thereon, importing and meaning, and intended to import and mean, that the said box was to be delivered to a certain person at Hove, in the county of Sussex: and the jurors aforesaid, upon their oath aforesaid, do further present that the said J. P. afterwards, to wit, on the 16th day of March, A. D. 1853, in London aforesaid, and within the jurisdiction of the said Central Criminal Court, did make application to the said company called the London, Brighton and South Coast Railway Company, to carry and convey the said box to Hove aforesaid, and there deliver the same, according to the said address and direction thereon, for reward to the said London, Brighton and South Coast Railway Company, in that behalf, and further to advance to him the said J. P., the sum of 12s. 4d. on the security of the said box and the contents thereof; and the jurors aforesaid, upon their oath aforesaid, do further present that the said J. P., devising and contriving to deceive the said company, and to cheat and defraud them of their moneys to the amount aforesaid, did then and there unlawfully, knowingly and designedly, falsely pretend to the said F. G., then and there being a person employed in the service of the said company, that the said box then and there contained certain valuable articles, that he the said J. P. was then lawfully entitled to demand and receive the said sum of 12s. 4d. for the said box and the contents thereof, from the person to whom the same imported to be directed as aforesaid, and also to confer on the said company the said right to demand and receive the said money, on the delivery by them of the said box and the contents thereof, according to the said address and direction; by means of which said last-mentioned false pretences, he the said J. P. did afterwards, to wit, on the day and year aforesaid, in London aforesaid, and within the jurisdiction of the said Central Criminal Court, unlawfully, knowingly and designedly, fraudulently obtain of and from the said London, Brighton and South Coast Railway Company, divers of their moneys, to wit, to the amount of 12s. 4d., with intent then and there to cheat and defraud them of the same; whereas, in truth and in fact, the said box did not then contain any valuable articles, as the said J. P. so falsely pretended as aforesaid; and whereas, in truth and in fact, the said J. P. was not then lawfully entitled to demand or receive the sum of 12s. 4d. for the said box and contents, as the said J. P. so falsely pretended as aforesaid, from any person whatever, or to confer on the said company the said right to demand or receive the said money, on the delivery by them of the said box and the contents thereof, according to the said address and direction; and whereas the fact really was and is, that the said box contained articles only of a worthless description, and no

articles of value whatever, as he the said J. P. then and there well knew, and was falsely and deceitfully made to represent a box containing articles of value, for the purpose of inducing the said company to advance their said moneys on the security thereof, and thereby to enable the said J. P. to cheat and defraud them of the same, and for no honest purpose whatever; against the form of the statute in that case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

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It appeared in evidence that the London and Brighton Railway Company, for the convenience of persons sending goods by their railway, and who would be entitled to receive small sums on the delivery of the goods at their destination, have been in the habit of advancing such sums when the goods are left at the station to be forwarded, and of receiving back the money at the time the goods are ultimately delivered. The amount asked for was usually trifling compared to the apparent value of the package, and the company considered they ran little risk whilst they held the goods as security for the sum advanced. The prisoner was alleged to have taken advantage of this practice on the part of the company, fraudulently to obtain money from them by the following course of proceeding:—He went to a tavern near the Blackwall railway station, and asked the landlord to allow him to leave a box there which he said he wished to have forwarded to Brighton, and would go over to the Brighton railway station and get their carman to call for it; that the carman would pay 11s. 9d. on the delivery of the box to him, and that he the defendant would call for the money in the afternoon. The box was accordingly left, and the defendant then went to the Brighton railway station, and gave to the clerk there a card, on which was written "Case to Brighton, 11s. 9d. to pay." He said that the card was to be taken to the Railway Tavern, and the landlord would deliver the package. The clerk sent the card in the ordinary course of business to the goods station, at the Bricklayer's Arms, and a carman was sent by the managing clerk there to receive the box, and pay the 11s. 9d., which he did. The defendant subsequently called for and received the money. The box was duly forwarded to Brighton, and on its being opened was found to contain brickbats, and other rubbish of no value whatever.

The evidence given in support of the second count related to another transaction of a somewhat similar kind, and involved no difference in principle from the foregoing.

Lilley (for the defendant) contended that on this state of facts the defendant could not be convicted. There was no false pretence within the statute. The pretence in the indictment was, that the box contained valuable property, but no such statement was made by the defendant, nor could it be inferred from anything that he had said or done. Again, the pretence, if any, was not made to the person advancing the money. Neither of the clerks at the different stations saw the case at all. The second clerk who directed the carman to pay the money did not even see the defen-

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dant; he saw nothing but the card, and what was written upon it certainly did not amount to the pretence alleged.

Robinson (for the prosecutor) submitted that the pretence was fully made out. It was true that the pretence stated in the indictment was not made by the defendant in so many words, but that was immaterial. It was sufficient if the defendant, from his conduct, fraudulently led the prosecutor or his agent to believe in a particular state of facts, although he did not assert their existence. That was established by the well known case of *R. v. Barnard* (7 C. & P. 784), where the defendant, who was not a member of the University, went into a tradesman's shop at Oxford in a cap and gown, and obtained goods from him; this was held to be a false pretence that he was a member of the University although he did not say so.

Lilley.—In that case the defendant did represent in terms that he was a member of the University.

Robinson (on referring to the case) admitted that was so, but in the judgment that was unnoticed, and it was expressly stated by the learned judge that, even without such a declaration the pretence would have been made out, and in all the text books the decision was so treated. *Story's case* (R. & R. 81) was also in point. The circumstance of the person advancing the money not having seen the box, was immaterial. It was proved that the company only advanced money under such circumstances upon property that was of value, and it would be a question for the jury whether the defendant was not aware of that practice, and whether by his conduct he did not seek to represent to them that the box contained valuable articles. The clerk at the principal station received his directions from the prisoner himself, who must have intended him to believe what alone would procure the advance of the 11s. 9d., and although this clerk did not himself pay the money, he did it through his agent, for he gave instructions to the clerk at the goods station, who gave orders to the carman advancing the money. So that in contemplation of law it was the first clerk who paid the amount, and it was paid on the false representation of the prisoner. The case was similar to those of the presentation of a false cheque, where nothing was said about its validity, but where on its production change was given for it on the faith of its being good. There were several cases showing that the merely uttering such an instrument was equivalent to a statement that the cheque was a valid one: (*Jackson's case*, 3 Camp. 370; *Freethy's case*, Russ. & Ry. 127.)

The COMMON SERJEANT (after consulting Jervis, C.J., and Coleridge, J., who were in the adjoining court.)—I am of opinion, and the learned judges whom I have consulted agree with me, that the evidence does not support the indictment. This is not like the case suggested of presenting a false cheque, because there the cheque was shown by the defendant to the person paying the money, and he immediately acted upon it. Nor is it like that of the pretended collegian, for there the cap and gown were seen

upon the person. In the present case, the person from whom the money was obtained, never saw the box at all. Moreover, I do not think that the pretence alleged in the indictment can be inferred from what the defendant is proved to have done. The merely representing that there would be 11s. 9d. to pay does not necessarily involve the assertion that the box was of value, because the money might be payable on the box reaching its destination, although the box itself was of no value whatever. Then if it is said that the prisoner meant the clerk to infer that the 11s. 9d. would be paid at Brighton, which he knew to be untrue, this is a pretence with regard to something future, and, therefore, not within the statute.

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Not guilty.

Robinson (for the prosecution.)

Lilley (for the defendant.)

Ireland.

COURT OF CRIMINAL APPEAL.

(Before MONAHAN, C. J., PIGOT, C. B., CRAMPTON, PERRIN, BALL, JACKSON, and MOORE, JJ.; PENNEFATHER and GREENE, BB.)

June 8, 1853.

REG. v. LAWLOR. (a)

Perjury, indictment for—Jurisdiction of Inferior Court.

A question as to the sufficiency of an indictment raised in the course of a trial may be reserved for the Court of Criminal Appeal, under 11 & 12 Vict. c. 78.

It is not necessary in an indictment for perjury, committed before an Inferior Court, to set out all the facts which show the authority of such court of limited jurisdiction, and it will be sufficient to aver that "the case came on to be tried, in due form of law," before the judge of the Inferior Court, "he having then and there sufficient and competent authority to administer the said oath to the said E. L." (the prisoner). Lavey v. The Queen (5 Cox Crim. Cas. 529) approved of and acted on.

"Jurisdiction" in 31 Geo. 3, c. 18, s. 111, means local jurisdiction, and, accordingly, under that act, Courts of Quarter Session have jurisdiction to try cases of perjury by statute as well as at common law.

THE following case was stated by Walter Berwick, Esq., Assistant-Barrister for the East Riding of the County of Cork:—

(a) Reported by P. J. M'KENNA, Esq., Barrister-at-Law.

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Indictment—
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The prisoner was tried at the Middleton Quarter Sessions, holden in March last, for the County Cork, East Riding, on an indictment for perjury, alleged to have been committed by him on the hearing of a civil bill process, tried at the Civil Bill Sessions, holden at Middleton, in the East Riding of the County of Cork, in November, 1852, before me, acting an assistant-barrister for the said riding in which the traverser was sued as defendant, and on which he was examined as a witness in support of his own case. The trial of the civil bill took place on the 2nd December, 1852. The indictment was as follows:—

“Cork, East Riding. } The jurors of our Lady the Queen, upon
Division of Middleton. } their oath, do say and present that
heretofore, to wit, at the General Sessions of the Peace, holden for
the Cork County, East Riding and division of Middleton, on the
29th day of November, in the sixteenth year of the reign of our
sovereign Lady Victoria, at Middleton, in said county, riding and
division aforesaid, before Walter Berwick, Esq., assistant-barrister
for the said county and riding, *a certain civil bill, wherein one John
Holliot Giles was plaintiff, and one Edward Lawlor was defendant,*
came on to be tried in due form of law, and was then and there
tried by the said Walter Berwick, Esq., assistant-barrister for the
said Cork County, East Riding and division, upon which said trial
the said Edward Lawlor, late of Youghal, in the said county, yeo-
man, then and there appeared as a witness for and on behalf of
himself; and the said Edward Lawlor, the defendant in the said
civil bill, was then and there duly sworn, and took his corporal
oath upon the Holy Gospel of God, before the said Walter Berwick,
so being such assistant-barrister for the said East Riding of the said
county, that the evidence which he the said Edward Lawlor should
give to the court, touching the matter then in question between the
said parties, should be the truth, the whole truth, and nothing but
the truth, he the said Walter Berwick, assistant-barrister as afore-
said, having then and there sufficient and competent authority to
administer the said oath to the said Edward Lawlor in that behalf.
And the said jurors, upon their oath, do further present that, at
and upon, &c., &c. And so the jurors aforesaid, upon their oath
aforesaid, do say that the said Edward Lawlor, on the 2nd day of
December, in the sixteenth year of the reign aforesaid, at Middleton
aforesaid, in Cork County, East Riding and division aforesaid,
before the said Walter Berwick, assistant-barrister as aforesaid (he
the said Walter Berwick having then and there such power and
authority as aforesaid), by his own most wicked, &c., falsely, &c.,
contra pacem et formam statuti.”

After the jury had been sworn and the prisoner given in charge,

Mr. Exham, counsel for the prisoner, objected to the indictment, and called for an acquittal of the prisoner on the ground that the indictment was insufficient in law, inasmuch as it did not aver or show that the perjury was committed on the trial of a cause or action which the assistant-barrister had jurisdiction to hear, it being merely averred therein that the perjury assigned was committed on

the trial of a certain civil bill that came on to be tried in due form of law, and that it did not state or aver that the civil bill was for a cause of action within the jurisdiction of the Civil Bill Court.

Jellett, who appeared for the prosecution, then applied to me, if I should be of opinion that the point was sustainable, to amend the indictment under the 1st section of the 14 & 15 Vict. c. 100, by introducing the statement that the civil bill was for the recovery of the sum of 4*l.* 6*s.* 1½*d.* for goods sold and delivered by plaintiff to defendant, and for money lent and advanced, and the other money counts. He renewed this application to me at the close of the case for the prosecution, and after the civil bill had been given in evidence. I refused to make the amendment on both occasions, because the alleged omission did not appear to come within my power of amendment, as it did not appear to me that there was any variance between the statement in the indictment and the evidence offered, but a simple omission of the statement which the prisoner's counsel alleged to be material and necessary. I, however, refused to decide that the indictment was bad for the cause assigned, but agreed to state a case for your Lordships' opinion. It appeared, on the evidence for the prosecution, that the prosecutor, who was the agent for a brewer, had advanced, in December, 1850, to the traverser, who is a publican, a sum of money for the purpose of paying for his publican's licence for the ensuing year. The agreement between them was, that the defendant should be allowed the sum of 1*s.* 6*d.* for each half-tierce or half-barrel of porter which he should take and pay for during the year for the establishment, and that this allowance should go to defray the money so advanced for the payment of his licence; but that, if he did not take a sufficient number of half-tierces or half-barrels during the year to pay, by this allowance, the money so advanced, then that the prosecutor should be at liberty to sue him for the balance which should remain due of the moneys thus advanced. At the end of the year 1851, Mr. Giles finding, as he alleged, that the traverser had not taken a sufficient quantity of porter to pay, by this allowance, the money so advanced, and a balance also remaining due for porter sold to him, brought a civil bill process against him, in which the cause of action stated was for 4*l.* 6*s.* 1½*d.* for goods sold and delivered, and for the balance remaining due of the moneys so advanced.

The defence set up by the traverser, on the hearing of the civil bill, was, that he had taken a sufficient number of half-tierces or half-barrels of porter within the year to repay the whole amount so advanced; and to sustain this case, he was produced and examined as a witness in his own behalf, and he swore, among other matters, that he took from the prosecutor, in the year beginning the 1st December, 1850, and ending 1st December, 1851, twenty-five half-barrels or tierces of porter, and if this were true, his debt for the moneys advanced would have been fully discharged. The plaintiff, who produced his books of account, and a clerk in his establishment to corroborate his testimony, swore that, within the

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period referred to, the traverser only got from his establishment eight half-tierces of porter, and that, after making the proper allowances and credits, the balance claimed in the civil bill process remained due. The prosecution was instituted against the traverser, for the alleged perjury committed by him in his evidence on the hearing of this civil bill. There were various assignments of perjury in the indictment, in reference to which, and to the evidence to sustain them, several objections were taken; but as the jury found their verdict exclusively on the first assignment of perjury, it is unnecessary to refer further to them. The civil bill served on the defendant was produced at the trial, and proved to have been duly served, and was for the recovery of the sum of 4*l.* 6*s.* 1½*d.*, due for goods sold and delivered, and on the several money counts.

At the close of the case for the prosecution, counsel for the traverser renewed his objection to the indictment, as before mentioned by me; and Mr. Jellett, for the prosecution, renewed the application to amend the indictment in conformity with the civil bill that had been produced in evidence. I made the same ruling on both, which I have already stated.

The case for the defence was then proceeded with, and a verdict of guilty on the first assignment of perjury, which averred that the traverser had falsely sworn, on the hearing of the civil bill, that he had got from the prosecutor twenty-five half-tierces or barrels of porter, between the 1st day of December, 1850, and the 21st day of December, 1851. This case was, in my opinion, very clearly established against the traverser.

Mr. Exham, counsel for the prosecution, then moved in arrest of judgment, on the ground that the Court of Quarter Sessions had no jurisdiction to try such a case, and referred to the 14 & 15 Vict. c. 57, s. 157, the 14 & 15 Vict. c. 108, s. 19, and 31 Geo. 3, c. 18, s. 3, and argued that the perjury, the subject-matter of the foregoing indictment, could not be tried at quarter session, inasmuch as it had been committed before me, sitting as assistant-barrister under the provision of the recent Civil Bill Act, and he contended, that the prisoner should have been tried for such perjury at the assizes, and not elsewhere.

The magistrates, under my advice, refused to arrest the judgment on this ground, but agreed to reserve this question also, for your Lordships' consideration, and we postponed passing sentence on the prisoner till next sessions. I stated, at the same time, that had any objection been made, or had I been asked by the prisoner's counsel, before the jury had been sworn, I should have sent the case to the assizes under the circumstances.

I have further to add that, on the application of the prosecutor, after the trial, I granted him a certificate for his expenses, under the statute. Upon the two questions thus stated, I respectfully ask your Lordships' opinion and judgment.

WALTER BERWICK.

Exham (for the traverser) referred to 23 Geo. 2, c. 11 (English); 31 Geo. 3, c. 18 (corresponding, Irish); 14 & 15 Vict. c. 100, ss. 19, 20; Archbold's Precedents of Indictments for Perjury, 659, and cited *R. v. Bishop*, 1 Car. & Mar. 302; *Ryall v. The Queen*, 3 Cox Crim. Cas. 254; *Lavey v. The Queen*, 5 Cox Crim. Cas. 269.

Corballis, Q. C., for the Crown, referred to 14 & 15 Vict. c. 57, sect. 157, and *R. v. Overton*, 4 Q. B. 83; *Bilk v. Broadbent*, 3 T. R. 183.

MONAHAN, C. J., delivered the judgment of the court. — The first objection taken is, that the Court of Quarter Sessions had no jurisdiction to determine this case:—First, inasmuch as the perjury was created by statute, and not therefore perjury at common law, and though the Court of Quarter Sessions had jurisdiction to try perjury at common law, they had no jurisdiction in cases of perjury created by statute. Secondly, inasmuch as this was perjury before an assistant-barrister in the course of a trial, and because he had given a certificate for the prosecutor's expenses that his jurisdiction was ousted, and the case should have been sent to the next assizes. The second is, that the indictment was bad on the face of it, within the authority of *R. v. Overton*. Another objection, which was not raised at the bar, was suggested by a member of the court, that, inasmuch as this was error, apparent on the record, the prisoner should have brought his writ of error. *R. v. Martin* (3 Cox Crim. Cas. 447), is, however, an express decision on this point, that, if such an objection has been made in the course of the trial, it may be reserved, under the 11 & 12 Vict. c. 78. *R. v. Martin* was a motion in arrest of judgment on the insufficiency of the indictment, and, therefore, a portion of such objections as have been made in the course of this trial, may properly be reserved for the consideration of this court. Then, as to the true construction of the Irish Act (31 Geo. 3, c. 18, s. 111), we are all of opinion that it gives general jurisdiction in all cases of perjury to Courts of Quarter Sessions, and that it is not confined to cases of perjury at common law; that the word "jurisdiction" there means local jurisdiction, and that, under this statute, assistant-barristers, &c., have authority to try all cases of perjury which may have been committed within the county, riding, or other division over which they have been appointed. The next objection is, that the case in which the perjury was committed was tried before the same assistant-barrister who tried the prisoner for this perjury, whereas the prisoner should have been sent for trial to the next session of Oyer and Terminer, or Gaol Delivery for the county or other district within which such perjury was committed, as this was a prosecution under the 19th section of Lord Campbell's Act.

From all that appears on the case stated for us, we think this was a prosecution under the 157th section of the Civil Bill Act, and not one under Lord Campbell's Act. The only passage in the case touching this matter is this at the end: "I have further to add, that, on the application of the prosecutor after the trial, I granted him a certificate for his expenses under the statute." Taking the

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case most favourably for the prisoner, it would appear that the assistant-barrister did not think proper to commit him, or bind over witnesses to prosecute. If he had done so, it would then have been a prosecution under that (19th) section of Lord Campbell's Act, and the prisoner should have been sent to the next session of the Court of General Gaol Delivery. This must have been a prosecution under the 157th section of the Civil Bill Act, which provides that the assistant-barrister may, if he think proper, give a certificate that the case ought to be prosecuted, which will entitle the prosecutor to get his expenses from the county treasurer. In prosecutions under that (157th) section, where he leaves the party at liberty, if he pleases, to prosecute, any court having proper authority may try the case. Now, as to the last argument, that the indictment is bad because it does not allege in terms that the case in which the perjury was committed was one which the assistant-barrister had jurisdiction to try, and in support of which *R. v. Overton* has been cited, it seems to us that the case of *Lavey v. The Queen* is one which cannot be distinguished from the present. We have, in the present case, an allegation that there was a civil bill pending; that it came on to be tried, in due form of law, by the said Walter Berwick, assistant-barrister for the Cork County, East Riding and division; that the oath was taken before him, the said Walter Berwick, assistant-barrister as aforesaid, having then and there sufficient and competent authority to administer the said oath. There is nothing in the indictment from which it follows that the case was not one which he had authority to try, and full evidence of its being such a case was given on the trial. We think it is impossible to distinguish the present case from *Lavey v. The Queen*; and if we were called on to decide between *R. v. Overton* and *Lavey v. The Queen*, we consider the last case comes within the spirit of Lord Campbell's Act, enabling the court to amend variances not material to the merits of the case. We think it was the object of that act, when the substance of an offence has been proved, to get rid of any technical objections which might be raised to the indictment. It is true that a writ of error had been brought to reverse the decision of the court in the case of *Lavey v. The Queen*, but we find in the note to the report of that case in Denison Crim. Cas. that it has not been followed up, and that, therefore, the authority of that case is in no way shaken. It is also right to remark that the Court of Exchequer distinguished *Lavey v. The Queen* from *R. v. Overton*. On the whole, we are of opinion that this case comes within the authority of *Lavey v. The Queen*, that that case is well decided, and that, therefore, the ruling of the court below should be affirmed.

Conviction affirmed.

COURT OF QUEEN'S BENCH.

May 24, 1853.

(Before CRAMPTON, PERRIN, and MOORE, JJ.)

REG. v. WALLACE. (a)

*Relaxation of prison rules—Motion for, by editor convicted of libel—
Form of application.*

An application on behalf of a prisoner for a relaxation in his favour of the rules of the prison where he is confined, should be brought forward by way of petition, and not as a motion: and will not be heard unless a copy of the rules, properly verified, is before the court.

Semhle, such applications should not be entertained at all. Per Crampton, J.

FITZGIBBON, Q.C., on behalf of the prisoner, moves for an order that the rules of the prison may be relaxed in favour of the prisoner. From the affidavit filed by the prisoner, it appears that, having been convicted of a libel in his newspaper on the officers and men of the 31st regiment, he was sentenced to six months' imprisonment in the gaol of Cavan. The affidavit states that Mr. Wallace's wife was refused access to him except for three hours in the day and on but two days in the week; that his paper, if he is thus refused communication with people in his confidence and employment, will be entirely ruined.

CRAMPTON, J.—Is there any instance of such an application as the present?

Fitzgibbon, Q. C.—Yes; in *Robert Caldwell's case*.

CRAMPTON, J.—Every man in the prison might apply for the same privileges if we entertain this application.

Fitzgibbon, Q. C.—In *Caldwell's case* the prisoner was an attorney, and the court directed that his clerk should have access to him for the purpose of carrying on his business. Our affidavit states that Mr. Wallace is only allowed to take exercise along with the rest of the prisoners at an inconvenient hour, and that he is in a delicate state.

PERRIN, J.—Have you a copy of the bye-laws of the prison? If not, this case is imperfectly before the court. We should have these.

CRAMPTON, J.—I cannot, for my part, conceive a more dan-

(a) Reported by P. J. M'KENNA, Esq., Barrister-at-Law.

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gerous rule than to interfere in such a case. Are we to confine our interference to cases of libel and to persons of the rank of gentlemen? If we give this indulgence to any, we must extend it to all.

PERRIN, J.—I do not wish to express any opinion at present on the subject. I should like to have the case properly before the court by a petition, with a copy of the prison bye-laws. I have now no matter before me on which to express an opinion.

[On inquiry in the Crown office, I was informed by Mr. Wilson that no such order was to be found in the Crown books, and consequently could not have been made. He supposed that the mistake into which Mr. Fitzgibbon fell was caused by the fact, that the application was made, and that an intimation was then given to the governor of the prison that Mr. Caldwell should be allowed to see his clerks. No order, however, was made on the subject.—RKP.]

COMMISSION COURT, GREEN-STREET.

August 3, 1853.

(Before LEFROY, C.J. and MONAHAN, C.J.)

REG. v. FULLARTON and CROOKS.(a)

Indictment, amendment of—Owner of stolen goods.

Where stolen property has been laid in a wrong person, the indictment may be amended, even after the counsel for the prisoner has addressed the jury and closed. Reg. v. Rymes (3 Car. & Kir. 326) overruled.

THE prisoners were indicted for that they on, &c., made an assault on Edward Critchley, &c.; and twenty-two rabbits, the goods and property of the said Edward Critchley, from the person and against the will of the said Edward Critchley, violently and feloniously did steal, take, and carry away *contra pacem*, &c.

From the evidence, it appeared that the rabbits had been shot by John Critchley and a gamekeeper of the Duke of Leinster on the duke's demesne, and that Edward was carrying the rabbits to market to sell them. Edward did not know what arrangement there was between his brother and the gamekeeper as to dividing the price of the rabbits, but he had no property in them.

J. A. Curran (for the prisoners) having addressed the jury, and, calling no witnesses, closed.

(a) Reported by P. J. M'KENNA, Esq., Barrister-at-Law.

As His Lordship was about charging the jury, the *misnomer* in the indictment was discovered, when

Smyly, Q. C. (for the Crown), applied to the court for liberty to amend the indictment, by substituting the words "the property of John Critchley and another" for "the property of Edward Critchley."

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J. A. Curran objected. In *Reg. v. Rymes* (3 Car. & Kir. 326), it was held that an application to amend should at latest be made before the prosecutor closes his case. That was an indictment for receiving goods, knowing them to have been unlawfully obtained from one James Pollard by false pretences. After the counsel for the defence had addressed the jury, an application was made to amend the indictment by striking out the words "one James Pollard by false pretences." But Williams, J., refused, saying, "I shall not consider whether the indictment, if amended, would be bad or not, as I shall lay it down as a general rule that I will not allow an indictment to be amended after the counsel for the defence has addressed the jury. The proper course is that, when the counsel for the prosecution has given all the evidence that he means to give, he should, if he wishes for an amendment, ask for it before he closes his case; and then, if the amendment is allowed, the counsel for the prisoner addresses the jury on the indictment as it is amended."

Smyly, Q. C.—It would entirely defeat the intention of Lord Campbell's Act if an amendment such as this, which can by no possibility prejudice the prisoner, should not be allowed. The words of the act can admit of no such interpretation as that case would put on them. Sect. 1 enacts, "that whenever, on the trial of any one for any felony or misdemeanor, there shall appear to be any variance between the statement in such indictment and the evidence offered in proof thereof in the name of any county, &c., or in the name or description of any person, &c., stated or alleged to be the owner or owners of any."

Per curiam.—We will allow this amendment to be made now; and if we are wrong, it will be in the prisoners' favour.

The indictment was accordingly amended, as required by the Crown counsel.

The prisoners were found guilty.

Their Lordships refused to reserve the point as to the propriety of allowing the amendment, although pressed to do so by the counsel for the prisoners.

The court made a similar amendment in another case tried on the same day, where the property was wrongly laid; Monahan, C.J., remarking that *R. v. Rymes* was no authority.

COMMISSION COURT, GREEN-STREET.

August 4, 1853.

(Before LEFROY, C.J. and MONAHAN, C.J.)

REG. v. DANIEL RORKE. (a)

Evidence—Calling witness to discredit prosecutrix distinction between and calling witness to collateral issue.

A witness may be called to prove that, on a former trial, the prosecutrix made statements inconsistent with those made by her on the second trial of the case, and the admission of such evidence may be distinguished from allowing witnesses to be examined to disprove statements not relevant to the issue.

THE prisoner was indicted for an attempt to murder Caroline Agnew. The entire case for the prosecution depended on the testimony of the prosecutrix, who stated that she had been thrown by the prisoner out of the top window of the house in which she was lodging with him, into the street, between the hours of eleven and and twelve at night. On her cross-examination she admitted that she had been in England, and had prosecuted there for a felony.

J. A. Curran (for the prisoner) in addressing the jury, stated that the prosecutrix was drunk at the time that she threw herself out of the window, so that this accusation was an after-thought. He proceeded to call, amongst other witnesses, one who had been present during the first trial (when the jury disagreed), to prove that on that occasion the prosecutrix had denied that she ever had been in England or had prosecuted there.

Corballis, Q.C. (with whom Smyly, Q.C. and the Hon. J. Plunket, Q.C. for the Crown), objected to this course, as raising an irrelevant issue, and calling witnesses to contradict the prosecutrix on matters not material or relevant to the issue.

MONAHAN, C.J.—We are only allowing him to prove a contradiction between her statements here and on the former trial. There is a distinction between this course and calling a witness to contradict the prosecutrix. We are not, however, to be understood as ruling this on argument. Counsel has often been allowed in cross-examination to ask this question. Did you say so and so on a former trial? This is a novel case certainly.

(a) Reported by P. J. M'KENNA, Esq., Barrister-at-Law.

Corballis, Q.C.—There is the same objection to allowing this class of evidence as to admitting evidence to contradict a witness on a point not material to the case.

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LEFROY, C.J.—The question here is, can you show that a witness on the former trial has on this one made a different statement? No matter whether the question is relevant or irrelevant to the present issue, it goes to the consistency of her evidence on the two trials.

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MONAHAN, C.J.—We are not looking to the truth or falsehood of her statement as to having been in England. Your objection would be good if the witness came to say that he saw her in Manchester, that he saw her prosecute there, &c. The evidence Mr. Curran proposes to give does not seem to me to come within the rule which excludes evidence raising an irrelevant issue. Rejecting anything that might be evidence in a doubtful case like this would be very dangerous.

The witness then proved that on the former trial the prosecutrix stated she had never been in England or prosecuted there.

LEFROY, C.J.—We have drawn a distinction, by which, however, we will not consider ourselves bound.

The prisoner was acquitted.

OXFORD CIRCUIT.

GLOUCESTERSHIRE SUMMER ASSIZES, 1853.

Gloucester, August 10.

(Before Mr. JUSTICE WILLIAMS.)

REG. v. SMITH. (a)

*Destroying tackle prepared for weaving—Statute 7 & 8 Geo. 4,
c. 30, s. 3.*

The cords employed to raise the "harness" or working tools of a loom, in order to move the shuttle to and fro, constitute "tackle" employed in weaving, and, therefore, cutting them is an offence within the 7 & 8 Geo. 4, c. 30, s. 3, which makes it felony to maliciously cut, break, or destroy, or damage with intent to destroy or to render useless (inter alia), any "tackle" or implement whether fixed or moveable, prepared for or employed in carding, spinning, throwing, "weaving," &c.

Under this statute, the maliciously cutting such tackle is a complete offence, and it is unnecessary to aver or prove an intent to destroy or render it useless.

Quære, whether cutting the "thrum," i. e., the ends of the woollen threads generally left in the machine when a piece of cloth is finished, for the purpose of more readily adjusting the succeeding work, is an offence within the statute? At all events, it does not support a count for maliciously cutting woollen warp; but the fact of cutting the "thrum" may be given in evidence in support of a count for cutting "tackle," in order to show the animus of the latter act, and that it was done maliciously.

THE prisoner, Peter Smith, was indicted for feloniously, unlawfully, and maliciously cutting, on the 15th of June last, certain machinery, the property of William Fluck.

The first count of the indictment alleged that the prisoner feloniously, unlawfully, and maliciously cut certain tackle, to wit, certain cords of Mr. Fluck, prepared for and employed in weaving. The second count charged the prisoner with damaging the tackle with intent to destroy it, and, in a third count, with intent to render it useless. The fourth count charged the defendant with feloniously, unlawfully, and maliciously cutting woollen warp, the property of Mr. Fluck.

It appeared from the evidence of Mr. William Smith Fluck,

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

the son of the prosecutor, a clothier at Stroud, that the prisoner had been in his father's employment two years. On the 7th of June, 1852, the prisoner was sent for to the office where the finished cloth was *passed*, and a piece of fustian cloth, which he had woven badly, was pointed out to him, and he was told that if another such piece was seen again, he must be discharged. On the 15th another piece was passed without remark, but the prisoner did not ask for another chain of *weft*, as he would have done in the ordinary course of business. On the following day, the witness, in consequence of information he received, went to the prisoner's loom, and found the cords taken from the "lamps" and "treadles," and the "slay" (a frame into which a number of steel rods are inserted) disengaged. This he found was caused by the thrum having been cut. The thrum ought not to be severed when a piece of cloth is taken off the machine. It would take a man about three days to replace the loom in its proper state. The prisoner was paid five shillings for starting the machine in Venetian work.

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On cross-examination a loose piece of cloth was produced and shown to the witness, which he said was called the "jag." It was the practice to leave the jag on, to prevent the necessity for fastening the thrum and harness afresh. Venetian cloth is made of yarn which runs in length from fifty to one hundred yards: a portion of that yarn forms the thrum. The weaver begins at the opposite end of the yarn, and works his way up to the thrum, as close as he can. The new yarn is fastened to the old thrum, the ends being united, and the weaver thus works the old thrum through the "slay" and brings the new yarn to the jay on the other side. The old thrum is brought down attached to the cloth, and is cut off by the masters and sold at ninepence per pound.

Re-examined.—The prisoner arranged the cords when he came to work for the prosecutor, and was paid for it. These cords were fastened to the thrum and treadles, and formed part of the machinery.

Frederick Meyrick, a weaver in the employment of the prosecutor, deposed that, on the 15th of June, the prisoner, after taking his work to be examined, returned and went into his loom. He then cut off the thrum, which is the end of the woollen chain or thread left in the working tools or harness, to fasten on to the next piece of cloth, and is the connecting link between the fabric and the machine. The chain is the one part, the shute the other. The thrum was cut off between the harness and the slay. He pulled one part of the thrum from the other, and he tore it after he cut it. He took off the cords of the machine, of which there were between thirty and forty, by cutting some of them. He also cut off a small string, which passes round the "marker," to regulate the size, and called the "reeveing string." It would take a workman from two to three days to replace all that was disarranged.

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George Gunstan confirmed the evidence of the last witness as to what the prisoner did. On cross-examination, he said that the fastening of threads to the thrum was the secret of the work. There was a different mode of tying the cords according to the work. The witness had his own tye, and the prisoner had his. Other workmen were in the habit of looking on and trying to get the secret. If the witness had been put on the prisoner's loom after he left, and it had not been disarranged by him, he (the witness), could have gone on, because he and the prisoner had the same tye, but that would not be the case with the generality of workmen. Every thread of the thrum is put through an eye in the "hevel" or tool, which has the effect of keeping them separate. There is a fresh thrum to every piece of work. The old thrum is cut off, and goes with the finished work to the master. It would take one man nearly a day to put on a new thrum. It is generally a woman's work, who is paid about eighteenpence for it. The chain is identical with the threads that go through the slay; those threads are fastened to the thrum. The cords are to raise the harness for the shuttle to move to and fro.

Re-examined.—In order to form the fresh thrum, it is not necessary to go through the process of threading the eyes of the "hevel." What the prisoner did, made it necessary to thread the eye of every "hevel."

W. H. Cooke, in addressing the jury on behalf of the prisoner, contended that this was a case never contemplated by the act of Parliament under which the prisoner was indicted. (b) The consequence of the prisoner's act was merely to give additional trouble, which would be repaired for eighteen-pence. Could it be said to be done with intent to destroy or render useless, when, if the whole of the thrum were removed, the machine would remain uninjured.

WILLIAMS, J.—It is not necessary that the act here charged to have been committed, should have been done with intent to destroy or render useless. The words of the statute are, "maliciously cut, break, or destroy, or damage with intent to destroy or to render useless." The first count of this indictment is for cutting

(b) The 7 & 8 Geo. 4, c. 30, s. 3, enacts "that if any person shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy, or to render useless, any goods or articles of silk, woollen, linen, or cotton, or of any one or more of those materials mixed with each other, or mixed with any other material, or any frame-work, knitted piece, stocking, hose, or lace respectively, being in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process, or progress of manufacture, or shall unlawfully and maliciously cut, break, or destroy, or damage, with intent to destroy or to render useless any warp or shute of silk, woollen, linen, or cotton, or of any one or more of those materials mixed with each other, or mixed with any other material, or any loom, frame, machine, engine, ruck, tackle, or implement, whether fixed or moveable prepared for or employed in cording, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles; or shall by force enter into any house, shop, building, or place, with intent to commit any of the offences aforesaid, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years; and, if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment."

the tackle, that is to say the cords and string, and that is the count to which the evidence principally relates. The cutting the thrum is only material in this way. It may show whether the act was done maliciously.

Cooke contended that in all cases there must be an intent to destroy or render useless in order to come within the terms of the act.

WILLIAMS, J., in summing up, told the jury that the prisoner stood charged in the first count with maliciously cutting certain tackle, that is to say, certain cords, belonging to Mr. Fluck; in the second count with damaging the cords with intent to destroy them; and, in the third count, with intent to render them useless. There is a fourth count, charging the prisoner with cutting woollen warp, but there is no evidence on that count. The question for you is whether you think he maliciously cut the cords, or whether he maliciously damaged them with intent to destroy or render useless. If you do, the charge is made out. (After going over the evidence, the learned judge proceeded.) When the work is finished, the weaver leaves a piece of cloth called a "jay," which operates as a sort of check to prevent the threads getting into a tangle. After the thrum is got through the "slay," the threads go through eyes to a cord fastened behind. When a new piece of work is begun, the knots are untied, and the yarn is fastened afresh. What the prisoner appears to have done was two things—cutting the thrums and cutting the cords. If you are of opinion that the cords formed part of the tackle (and the evidence is that they did), then the charge is made out. With reference to the question raised by the prisoner's counsel, I incline to think that this indictment as framed is within the meaning of the act. If the cords were cut maliciously it is unnecessary to aver that the act was done with intent to destroy or render useless, for this simple reason, that, if actually cut, then, if done maliciously, it must be done with intent to destroy. The counsel is right, if the defendant committed the act thinking he had a right, or even a notion that he had a right, for that is not the offence charged. The question for you resolves itself into this:—Did the prisoner do it in anger and revenge to his employer, or from any supposed right to conceal his art. Although cutting the thrums is not the offence charged, it is material in this way: it is offered to you as showing the object of the prisoner; for, if he cut the thrums maliciously, that is a key to the other act—cutting the cords. It does not appear that the prisoner derived any advantage from cutting the thrums.

Verdict, guilty.

Pigott for the prosecution.

W. H. Cooke for the prisoner.

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OXFORD CIRCUIT.

Worcester, July 16, 1853.

(Before Mr. JUSTICE CROMPTON.)

REG. v. COURT.(a)

Maliciously throwing stones, &c., against railway carriages—Construction of the statute 14 & 15 Vict. c. 19, s. 5.

To constitute a felony under the statute 14 & 15 Vict. c. 19, s. 7, which enacts that "if any person shall wilfully and maliciously cast, throw, or cause to fall or strike against, into or upon any engine, tender, carriage, or truck used upon any railway, any wood, stone, or other matter or thing, with intent to endanger the safety of any person being in or upon such engine, tender, carriage, or truck, every such offender shall be guilty of felony," it is necessary that the stone or other thing used should be thrown against and strike an engine, tender, carriage, or truck, having a person or persons in or upon it; and, therefore, although a stone may be thrown at a train with intent to injure persons being therein, yet, if it strikes a carriage or tender not having any person in or upon it at the time, the felony is not proved.

THE prisoner was indicted for feloniously, wilfully, and maliciously casting and throwing a stone against, into, at, and upon a certain tender, then being used upon the Midland Railway, with intent to endanger the safety of certain persons then being upon such engine and tender; against the form of the statute in such case made and provided.

There were other counts in the indictment, charging the prisoner with throwing the stone against, &c., a certain "tender and engine," and against "certain carriages."

The evidence was, that the prisoner, while standing on a bridge, threw a stone over the parapet wall, while a train was passing underneath. The stone fell upon the tender of the engine. It appeared that there was no person on the tender at the time—the engineer and stoker being upon the engine. At the close of the case for the prosecution,

Rupert Kettle, for the prisoner, objected that no offence had been proved within the terms of the statute under which the prisoner was indicted. The statute (14 & 15 Vict. c. 19, s. 7) enacts that "if any person shall wilfully and maliciously cast, throw, or cause

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

to fall or strike against, into, or upon any engine, tender, carriage, or truck used upon any railway, any wood, stone, or other matter or thing, with intent to endanger the safety of any person being in or upon such engine, tender, carriage, or truck, every such offender shall be guilty of felony." The statute, therefore, contemplates a state of facts where a stone or other thing is thrown against any engine, tender, carriage, or truck, and strikes it, and where, at the time it so strikes, there is some person or persons upon the engine, tender, or other carriage so struck. Here the tender was the carriage struck, and there was no person upon it at the time, the engineer and stoker being upon the engine. It could not be said, therefore, that the prisoner had struck the tender with intent to endanger the safety of any person being in or upon *such* tender. The offence, therefore, does not fall within the act.

Huddleston and *Scotland*, for the prosecution, contended that the words "cast" and "throw against" met the present case, and it was not necessary, in order to be within the words of the statute, that the stone or other implement used should actually come in collision with the part of the train in which any persons were. The word "against" must be taken to include "at." It was sufficient if the stone was cast or thrown at the time with intent to endanger the safety of any person in the train, although it actually struck the tender or other part of the train in which no person happened to be at the time. The intent was a question for the jury. Even if, to satisfy the statute, it was necessary that the stone should actually strike the train, it was immaterial whether the persons in the train, to endanger whose safety the act was done, were on the engine, tender, carriage, or truck.

Kettle, in reply.—The words "cast," "throw," and "against" were not capable of the construction contended for, as the subsequent words, "into" or "upon," clearly limited the section to the case of an actual striking. And to say that the statute applied to the case of striking a tender, no person being thereon, was directly in the teeth of the words of the section.

CROMPTON, J., said that he thought the objection must prevail, as, whatever might be the intention of the Legislature, the words of the section were clearly limited to the case of anything thrown upon an engine or carriage containing persons therein. He would, however, consult Mr. Justice Coleridge sitting in the other court.

The learned judge, having retired for that purpose, said, on his return, that Mr. Justice Coleridge agreed with him in opinion that the objection was well sustained, and that no offence within the statute being established, the prisoner was entitled to an acquittal.

Verdict—Not guilty.

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*Maliciously
impeding a
railway.*

[There cannot be any doubt of the correctness of this decision with regard to the section in question, but the attention of the learned judges does not appear to have been directed to the statute of the same session, 14 & 15 Vict. c. 100, s. 9, of which is as follows:—"And whereas offenders often escape conviction by reason that such persons ought to have been charged with attempting to commit offences, and not with the actual commission thereof; for remedy thereof be it enacted, that if, on the trial of any person charged with any felony or

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misdeemeanor, it shall appear to the jury upon the evidence that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the same, such person shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is not guilty of the felony or misdemeanor charged, but is guilty of an attempt to commit the same, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular felony or misdemeanor charged in the said indictment; and no person so tried as herein lastly mentioned shall be liable to be afterwards prosecuted for an attempt to commit the felony or misdemeanor for which he was tried." It seems to be beyond doubt, that the jury in this particular case might have convicted the prisoner of the attempt to commit the statutable offence charged in the indictment.—J. E. D.]

CENTRAL CRIMINAL COURT.

MAY SESSION, 1853.

May 12.

(Before JERVIS, C. J. and ALDERSON, B.)

REG. v. LALLEMENT. (a)

Shooting, with intent to murder—Intent—Amending indictment.

Upon the trial of an indictment for shooting, with intent to murder a person unknown, it must be proved that there was an intent on the part of the prisoner to murder some particular person.

The court will not amend an indictment after plea, where, in its amended form, it might be demurrable for generality.

THE prisoner was indicted for feloniously shooting at a person unknown, with intent to murder him. The evidence for the prosecution was to the effect that the prisoner, being irritated by a crowd of boys who were following him, discharged a loaded pistol among them and thereby wounded a person who was passing along the street. There was nothing to show any intent on the part of the prisoner to shoot at any particular person, nor was the individual injured one of those who were teasing him.

JERVIS, C. J. (at the close of the case for the prosecution.)—I do not think that the charge contained in this indictment is proved. Doubtless, at common law, if the person wounded had been killed,

(a) Reported by B. C. ROBINSON, Esq., Barrister-at-Law.

it would have been murder. But this is an offence under the statute, and must be proved strictly in its very terms.

Bodkin (for the prosecution) assented to this view of the case, but applied to the court to amend the indictment in accordance with the fact, by charging the prisoner with an intent to murder in the words of the 1 Vict. c. 85, s. 2.

JERVIS, C. J.—That would, no doubt, be a good indictment after verdict, under the 7 Geo. 4, c. 64, s. 20, being in the words of the statute; but it may be a question whether it would not be demurrable for generality. We think that if we amend, we ought to do it in such a manner as that the indictment shall not be in any way defective. The prisoner has pleaded, and he ought to have an opportunity of demurring, which now, of course, he cannot do. We must, therefore, refuse the application.

ALDERSON, B., concurred.

Verdict—Not guilty.

Bodkin (for the prosecution.)

O'Brien (for the prisoner.)

[In *R. v. Mary Ann Ryan* (2 Moo. & Rob. 213), the prisoner was charged with causing poison to be taken by A. B., and the evidence was, that the poison, although taken by A. B., was intended for another person, and the prisoner was convicted. Baron Parke, however, who tried the case, having consulted with Baron Alderson, doubted whether the verdict could be supported, the intent not having been proved as laid, and his lordship ordered a fresh indictment to be preferred, alleging the intent, in the words of the 1 Vict. c. 85, s. 2, to have been to commit murder generally. On that indictment the prisoner was tried and was convicted.—*REPORTER.*]

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v.
COURT.
—
1853.

*Shooting with
intent—
Practice.*

COURT OF CRIMINAL APPEAL.

June 4, 1853.

REG. v. GOODENOUGH. (a)

Larceny—Embezzlement—Evidence.

Upon an indictment for embezzlement, the evidence of dishonest dealing with the money of the prosecutor was, that the defendant, who was in his service, had received a cheque which he was to get cashed, and lay out the proceeds in the market; that he did cash it, but did not lay out the proceeds as he ought to have done, and that in the prosecutor's books he gave a wrong account of the manner in which the money had been expended. The jury found the defendant guilty of larceny, and acquitted him of the embezzlement:

Held, that the prisoner had been improperly convicted of larceny, and that a conviction for embezzlement might have been sustained.

HENRY HARRIS GOODENOUGH was tried upon the following indictment: (The indictment, which was set out at length in the case, contained three counts in the ordinary form for embezzlement, of three separate sums within six months.)

The following was the case proved in evidence in support of the indictment, so far as is material to the question reserved. The prosecutor, Joseph Hamlyn, is a woolstapler, carrying on business in co-partnership with John Hamlyn, at Horrabridge, in the parish of Sampford Spinely, in the county of Devon. The prisoner had been for many years last past in his employment as a clerk and general servant, his duties being to keep the books, viz.: the day cash book or market book, the cash book and ledger, and to attend the neighbouring markets, viz., Tavistock and Callington markets, both towns being within a few miles of prosecutor's place of business, for the purpose of buying skins and whatsoever else his employer might require. Before going to market, the prosecutor was in the habit of giving the prisoner either money or a cheque on his banker's, to defray the expenses of the day, and it was the prisoner's duty to deliver what goods he purchased, and to account for the moneys so received the same evening or the next morning, in a book kept for that purpose, and to pay over to the prosecutor the surplus of the money so received, and not expended. This was not, however, always strictly done. It was his duty to enter all payments or receipts made and received by him in the course of his said employment in his day cash book, or market book, thence carrying them into a book called the cash book, and thence into a book called the ledger. It was the prisoner's duty, in the course of his employment, to pay ready money for the skins, and all articles he purchased, and he had not the prosecutor's authority to buy any skin or skins on credit.

On Friday the 8th October, 1852, the prisoner, having an

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

admitted balance of cash belonging to prosecutor in his hands, of 11*l*. 11*s*., requested prosecutor for a further advance of cash, which prosecutor agreed to, and gave prisoner a cheque for 10*l*. on his banker's, for the purpose of being expended in the course of his said employment on that occasion, as he was then about to attend Tavistock market in the course of his said employment, which said cheque was given to and cashed by the prisoner. He entered the 10*l*. to his debit in his account in the day cash book, or market book, which he delivered to the prosecutor on the next day, and made, amongst other entries of payments made to butchers at the Tavistock market (which he debited to the prosecutor) the following:—

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—
*Larceny or
embezzlement.*

October 8, 1852: Tavistock.

Richard, five sheep, 4*s*. £1 0 0

The prisoner having debited the prosecutor in the day cash book or market book, with this payment, 1*l*. to Richard, and several other sums to different butchers, amounting in the whole to 13*l*. 8*s*. 4*d*., as the payments for skins of this day's market, then carries this sum, 13*l*. 8*s*. 4*d*., as having been paid by him this day into the cash book (in his own manuscript); and on the other side of the account gives prosecutor credit for the before-mentioned balance of 11*l*. 11*s*. 1*d*. On Wednesday, the 13th of October, 1852, the prisoner attended Callington market in the course of his said employment, having in his hands an admitted balance from Tavistock market (8th October, 1852), of 8*l*. 2*s*. 9*d*., and having received in the interim a cheque from prosecutor for 20*l*., and cash from a Mr. Wilcocks, 8*l*. for the use of the prosecutor; on the next day he made, amongst other entries of payments with which he debited the prosecutor on this occasion, the following:—

Case.

October 13: Callington Market.

Jones, six sheep, 4*s*. £1 4 0

Ditto lamb, 2*s*. 0 2 0

Amounting to 1*l*. 6*s*. as paid to Jones, and several other sums to different butchers, amounting in the whole to 11*l*., as the payments for skins of this day's market; the prisoner then carries this sum, 11*l*., as having been paid by him this day into the cash book (in his own manuscript); and on the other side of the account gives prosecutor credit, on 9th October, 1852, for the said cheque, value 20*l*., and 8*l*. received by him of Wilcocks. On Wednesday, the 20th October, 1852, the prisoner attended the Callington market in the course of his said employment, having in his hands a balance of 28*l*. 6*s*. 4*d*. in cash, after giving prisoner credit for several payments made by him for prosecutor, including the payments made by prisoner on the last Callington market day (13th October, 1852), and between the said 13th October and 20th October, 1852, amounting in the whole to 24*l*. 8*s*. 2½*d*. Prisoner received two cheques from prosecutor, one for 38*l*., the other for 17*l*., the first dated the 15th October, 1852, the second dated 20th October, 1852, which said cheques the prisoner cashed for the purpose of

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being expended in the course of his said employment on that occasion; and in his account in the day cash book, or market book, delivered to the prosecutor on the next day, he made, amongst other entries of payments to butchers with which he had debited the prosecutor, the following:—

Callington Market, October 20th, 1852.

Spear, eight ditto, 4s. £1 12 0

The prisoner, having debited the prosecutor in the day cash book, or market book, with this payment as paid to Spear, amounting to 1*l.* 12*s.*, and several other sums to different butchers, amounting in the whole to 10*l.* 1*s.* 10½*d.*, as the payment for skins of this day's market, the prisoner then carries this sum, 10*l.* 1*s.* 10½*d.*, as having been paid by him this day into the cash book (in his own manuscript); and on the other side of the account gives prosecutor credit on the 15th October and 20th October, 1852, for the said two cheques, value respectively 38*l.* and 17*l.*

Case.

The prisoner, in addition to these entries in the day cash book, or market book, on the several occasions before mentioned, entered in the cash book, in his own handwriting (*inter alia*), the said sums of 1*l.*, 1*l.* 6*s.*, and 1*l.* 12*s.*, as paid on the said then several occasions to Richard, Jones, and Spear, although these sums had never been paid by the prisoner, and although the goods were duly delivered to the prosecutor. It was proved that he had not made either of these payments; on the contrary, without the prosecutor's knowledge or authority, on the 8th, 13th, and 20th days of October, 1852, he had agreed with the several parties, Richard, Jones, and Spear, to pay for the skins, the subject of these entries, at the end of the quarter, and not at the time the purchases were made, and that these transactions should not be for ready money. It was also proved, that in consequence of the prisoner being back in his accounts, he was to receive no salary from Lady-day, 1852.

The prosecutor had since paid Richard, Jones, and Spear, the before-mentioned sums. The prosecutor having discovered that the payments to Richard, Jones, and Spear, had not been made, he expostulated with the prisoner, who suddenly, in November, left prosecutor's house without any previous intimation to prosecutor, his workmen or servants. He returned again in a day or two, and had an explanation with prosecutor.

The counsel for the prisoner, at the close of the case for the prosecution, contended—1st., that the facts proved did not constitute embezzlement; 2ndly, that they did not amount to larceny.

The court, after hearing the counsel for the crown on these objections, were of opinion that the prisoner took the money in question, in each case, in such a manner as to amount in law to larceny, and so directed the jury.

The court also told them that, supposing they were of opinion, from the evidence, that the three several sums of money, or any one of them, were given to the prisoner as servant, to pay his

master's bills, and he appropriated these moneys to his own use, and that, at the time he received them, he intended to convert them to his own use, the offence of larceny would be made out.

The court also told them, that if a master placed money in a servant's hand for the purpose of paying bills, and he applied the same to his own use, he was guilty of larceny, as the money was never out of his master's possession, and that, if they thought the prisoner had received the money with the intention of appropriating it, or any part of it, to his own use, he was guilty of larceny, and that no subsequent intention to return the money would alter the character of the original taking, which constituted the crime.

The jury found the prisoner guilty of larceny as a servant; not guilty of embezzlement.

At the request of the prisoner's counsel, the court respited the judgment, and reserved the question whether the prisoner was convicted according to law, for the opinion of the judges of the Court of Appeal, which opinion is now requested. The prisoner was discharged on recognizances to appear and receive judgment when called upon.

Counsel did not appear for the prisoner.

Lopez in support of the conviction.

LORD CAMPBELL, C. J.—The indictment is in such a form that the prisoner may be convicted either of embezzlement or of larceny, but the jury must say which; and in this case the finding is an acquittal on the charge of embezzlement, and a verdict of guilty on that of larceny. The evidence is, that the prisoner got the cheque, made lawful use of it, and misapplied the change for the cheque. That is not larceny, it is embezzlement, and so the finding is not in either way to be supported.

Lopez.—The prisoner at starting had an admitted balance of 11*l.* in his hands; and that brings this case within *R. v. Butler*, 2 C. & K. 340; *R. v. Hawkins*, 1 Den. C. C. 584.

MARTIN, B.—That may have been expended in paying for the sheepskins.

MAULE, J.—The matter stands thus: he gets a cheque for 10*l.* which he is to have cashed, and to spend the produce of in the market. He gets the money and appropriates it to his own use; is not that embezzlement?

Lopez.—If the prosecutor is confined to the cheque there is an end of the case.

LORD CAMPBELL, C. J.—If the conviction had been for embezzlement it would have been good; but the prisoner has only been found guilty of larceny, and there is no evidence to support a conviction for that.

PARKE, B., MAULE, J., TALFOURD, J., and MARTIN, B., concurred.

Conviction quashed. (b)

(b) In this case, no counsel being instructed for the prisoner, the court were about to give judgment without hearing the argument on the part of the prosecution; but it was pointed out that the statute, constituting the court, required it to hear an argument at the desire of either the prosecutor or prisoner.

COURT OF CRIMINAL APPEAL.

June 4, 1853.

REG. v. CLARK AND OTHERS. (a)

Indictment—Charging several previous convictions—Motion in arrest of judgment.

Under the stat. 7 & 8 Geo. 4, c. 28, s. 11, and 14 & 15 Vict. c. 19, s. 9, any number of previous convictions may be alleged in the indictment, and proved for the purpose of aggravating the punishment.

THE four prisoners were tried at the General Sessions for Middlesex, May, 1853, upon the following indictment:—The jurors, &c. upon their oath present, that John Clark, Emma Freeman, Edward Maynard, and Mary Ann Williams, on, &c., one purse and six shillings in money, of the property of William Smith, from her person feloniously did steal, take and carry away against, &c.; and the jurors aforesaid, upon their oath aforesaid, do further present, that before the time of the committing of the felony hereinbefore mentioned, that is to say, at the adjourned general sessions of the peace, held at, &c., on, &c., the said John Clark, by the name of Benjamin Hunter, was convicted of felony; and the jurors aforesaid, upon their oath aforesaid, do further present, that before the time of committing the felony first hereinbefore mentioned, that is to say, at the general sessions held, &c., on, &c., the said John Clark, by the name of John Ballboy, was convicted of felony. The prisoner Clark was arraigned in the usual way upon the whole indictment, and pleaded not guilty to all the charges; the jury returned a verdict of guilty against all the prisoners on the count for larceny from the person, and was then charged to inquire at the same time of both the convictions, and evidence was offered, and not objected to, as to both, and the jury returned a verdict of guilty against Clark upon both. The counsel for the prisoners then contended—1st. That the statement of two convictions against one prisoner vitiated the indictment as against all the four prisoners, and that the judgment must be arrested generally. 2ndly. That if it did not affect all the prisoners, it vitiated the indictment as against Clark, and that the

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

judgment must be arrested as against him. 3rdly. That at all events the judgment must be arrested as far as regarded the previous convictions for felony, and that judgment could only be pronounced against Clark upon the count for larceny from the person.

The judgment has been respited upon all the prisoners, and they were committed to prison to abide the judgment upon this case.

Metcalfe, for the prisoner Clark.—The statute 7 & 8 Geo. 4, c. 28, s. 11, upon which this question arises, speaks only of one previous conviction, and the indictment, containing a count under that statute, forms but one charge; but the introduction of many previous convictions makes many charges.

LORD CAMPBELL, C. J.—There is no charge of a previous conviction as an element of the offence. The allegation is introduced with a view to the punishment only.

MARTIN, B.—At all events, the 14 & 15 Vict. c. 100, s. 25, answers the objection at this stage of the proceeding; because this is a formal defect, and ought to have been taken advantage of, if at all, by demurrer or motion to quash before the swearing of the jury. Besides, the previous convictions have no effect except upon the judgment, and in this case judgment has not been given.

Metcalfe.—The coinage cases show how a statute of this nature ought to be interpreted. In *R. v. Tandy* (2 Leach, 970), which was the case of a second offence within ten days, it was held that the double uttering must be charged in one count; and in *R. v. Robinson* (1 Moo. C. C. 413), on a conviction for two separate offences of uttering, in two counts, that one judgment for two year's imprisonment under sect. 7, was bad. The principal offence, therefore, and the previous conviction, are but one charge; and, if so, any judgment now given on this indictment must be erroneous, for on the same count a man may not be found guilty of distinct offences.

MARTIN, B.—In *R. v. Tandy*, the double uttering was a distinct offence under 15 Geo. 2, c. 28, s. 3, but under 14 & 15 Vict. c. 19, s. 9, the previous conviction does not at all affect the character of the subsequent offence, and is not to be inquired into until the principal charge is disposed of.

MAULE, J.—Do you contend that an improper statement of a previous conviction would vitiate the indictment?

Metcalfe.—According to the cases cited it would; and *R. v. Turner* (1 Moo. C. C. 347) is to the same effect.

MAULE, J.—Those cases are quite distinct; because there the two misdemeanors together made out the one felony; whereas, in this case, the previous conviction does not alter the quality of the offence at all.

Metcalfe.—At all events the court could not strike out the averment of one of several previous convictions, when found by the grand jury: (*R. v. Pewtress*, 2 Str. 1026.)

W. Cooper, contra, was not called on.

LORD CAMPBELL, C. J.—We clearly cannot interfere in this case; but for the guidance of the court below, I may express my

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clear opinion, that several previous convictions may be lawfully set out in an indictment; for the object of setting out a previous conviction is only to justify a severer punishment. To prove one previous conviction many may be alleged; and if one be proved, that will be sufficient. I think that it never was the intention of the Legislature to confine the prosecutor to the allegation and proof of one previous conviction, though the 7 & 8 Geo. 4, c. 28, does use the expression, "*a* conviction," in the singular number; but now the recent statute, 14 & 15 Vict. c. 19, s. 9, removes all doubt; for it uses the plural number, and mentions "the previous offence or offences," and "the previous conviction or convictions," clearly, therefore, contemplating that several previous convictions may be charged. Independently, however, of this statute, I should have no doubt about it. There may be a difficulty in proving any given one of several previous convictions, though no difficulty in proving one out of several; and as it is important for the judge, in determining the punishment, to know how many previous convictions there have been, so it is useful, towards proof of one, that there should be a power of alleging more than one.

PARKE, B. concurred.

MAULE, J.—Mere multiplicity of statement is no objection to an indictment, and that rule could never be more safely applied than in this instance; for nothing can be more remote from probability than that several previous convictions should be stated contrary to the fact.

Conviction affirmed.

COURT OF CRIMINAL APPEAL.

June 4, 1853.

REG. v. WHITE. (a)

Larceny—Diversion of gas before it reaches the meter—Asportavit.

A. having contracted with a gas company to consume gas and pay according to meter, in order to avoid paying for the full quantity of gas consumed, introduced into the entrance pipe another pipe for the purpose of conveying the gas to the exit pipe of the meter, and so to the burners for consumption without passing through the meter itself. The entrance pipe was the property of A., but he had not by his contract any interest in the gas or right of control over it until it passed through the meter. A. having been convicted of a larceny of the gas : Held, that the conviction was right.

THE prisoner was indicted at the last Quarter Sessions for Berwick-upon-Tweed, for stealing 5000 cubic feet of carburetted hydrogen gas of the goods, chattels, and property of Robert Oswald and others. Mr. Oswald was a partner in the Berwick Gas Company, and the prisoner, a householder in Berwick, had contracted with the company for the supply of his house with gas, to be paid for by meter. The meter, which was hired by the prisoner of the company, was connected with an entrance pipe through which it received the gas from the company's main in the street, and an exit pipe through which the gas was conveyed to the burners. The prisoner had the control of the stop-cock at the meter, by which the gas was admitted into it through the entrance pipe, and he only paid the company, and had only to pay them for such quantity of gas as appeared by the index of the meter to have passed through it. The entrance and exit pipes were the property of the prisoner. The prisoner, to avoid paying for the full quantity of gas consumed, and without the consent or knowledge of the company, had caused to be inserted a connecting pipe with a stop cock upon it into the entrance and exit pipes, and extending between them; and the entrance pipe, being charged with the gas of the company, he shut the stop cock at the meter, so that gas could not pass into it, and opened the stop cock in the connecting pipe, when a portion of the gas ascended through the connecting pipe into the exit pipe, and from thence to the burners, and was consumed there, and the gas continued so to ascend and be consumed until by

(a) Reported by A. BITTLESTON, Esq, Barrister-at-Law.

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shutting the stop-cock in the connecting pipe the supply was cut off. This operation was proved to have taken place at the time specified by the prosecutor. It was contended for the prisoner, that the entrance pipe, into which the gas passed from the main, being the property of the prisoner, he was in lawful possession of the gas by the consent of the company as soon as it had been let into his entrance pipe out of their main, and that his diverting the gas in its course to the meter, was not an act of larceny. I told the jury that if they were of opinion, on the evidence, that the entrance pipe was used by the company for the conveyance of the gas by the permission of the prisoner, but that he had not by his contract any interest in the gas or right of control over it until it passed through the meter, his property in the pipe was no answer to the charge, that there was nothing in the nature of gas to prevent its being the subject of larceny, and that the stop-cock on the connecting pipe being opened by the prisoner, and a portion of the gas being propelled through it by the necessary action of the atmosphere, and consumed at the burners, there was a sufficient severance of that portion from the volume of gas in the entrance pipe to constitute an *asportavit* by the prisoner, and that if the gas was so abstracted with a fraudulent intent he was guilty of larceny. The jury answered the questions put to them in the affirmative, and found the prisoner guilty; I postponed judgment, taking recognizance of bail according to the statute for the appearance of the prisoner at the next sessions to receive judgment if this court should be of opinion that he was rightly convicted.

Argument.

Ballantine for the prisoner.—The prisoner was not guilty of larceny. He received the gas with the full consent of the company, and the evidence only shows that he did not account with the company according to his contract. The prisoner was guilty of fraud in evading the accounting by the meter; but his conduct was not felonious.

LORD CAMPBELL, C. J.—He took the gas from the company against their will, instead of receiving it properly and accounting for it.

Ballantine.—The Gas Works Clauses Act, 10 Vict. c. 15, s. 18, provides a specific penalty for this very offence, which would hardly have been done if it had been regarded as a larceny.

MAULE, J.—That clause may be intended to provide against frauds of a different kind, such as damaging the machinery or altering the index of the meter, which would not be larceny.

LORD CAMPBELL, C. J.—Is not this a taking *invito domino*?

Ballantine.—The delivery of the gas is voluntary, and the possession was not obtained by fraud.

MAULE, J.—The taking was by turning the gas into a new channel without the leave of the company, and that was done with intent to defraud.

Ballantine.—There was no trespass.

MAULE, J.—If this gas, when taken, was in the lawful possession of the prisoner, and he was only guilty of a breach of contract in not

accounting, you must say the same of the surreptitious introduction of new burners.

Ballantine.—An evasion of the meter and an interference with it stand on the same ground. The meter is only the voucher of an account, and if there is a delivery according to contract on the one hand, and only a fraudulent dealing with a voucher on the other, there is no larceny.

LORD CAMPBELL, C. J.—I think that the conviction ought to be affirmed, and that the direction of the learned Recorder was most accurate. Gas is not less a subject of larceny than wine or oil; but is there here a felonious asportation? No one who looks at the facts can doubt it. The gas, no doubt, is supplied to a vessel which is the property of the prisoner, but the gas was still in the possession of the company. Then, being in the possession of the company, and their property, it is taken away *animo furandi* by the prisoner. If the property remains in the company until it has passed the meter, which is found—to take it before it has passed the meter constitutes an asportation. If the asportation was with a fraudulent intent, and this the jury also have found—it was larceny. As to the act of Parliament, the Legislature has, for convenience' sake, added a specific penalty, but that cannot reduce the offence to a lower degree. My brother Maule has, however, given a probable explanation of that provision.

PARKE, B., MAULE, J., TALFOURD, J., and MARTIN, B., concurred.

Conviction affirmed.

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Judgment.

COURT OF CRIMINAL APPEAL.

June 4, 1852.

REG. v. HOLMES. (a)

Public nuisance—Indecent exposure in an omnibus—Conclusion—ad commune nocumentum—Indictment—Evidence.

An indictment for nuisance alleged an indecent exposure of the person in a public omnibus in sight of A. B. and C. D., and divers liege subjects, to the great scandal of the same.

Held, that the indictment was good; and supported by evidence of an exposure in an omnibus, made designedly in the presence of several passengers; an omnibus under such circumstances being a public place for the purposes of the indictment.

The omission to conclude ad commune nocumentum is cured by the statute 14 & 15 Vict. c. 100, s. 24.

CHARLES HOLMES was indicted at the Middlesex Sessions, May, 1853, for that he in a certain public vehicle or conveyance called an omnibus, and employed for the purpose of carrying passengers for hire, and frequented and used by divers liege subjects of our said Lady the Queen, passing and repassing in and out of the said vehicle, in the sight and view of A. B. and C. D., and divers of the liege subjects of our said Lady the Queen in the said omnibus then and there being, unlawfully, wickedly, and scandalously did expose to the view of the said persons so present as aforesaid, the body and person of him the said Charles Holmes naked and uncovered for a long space of time, to wit for the space of half-an-hour; to the great scandal of the said liege subjects of our said Lady the Queen, and against the peace of our said Lady, her crown and dignity. In a second count the offence was charged as having been committed in a certain public and common highway, called the "New Road" in the presence of divers liege subjects, &c. and concluded like the first count, "to the great scandal of the said liege subjects of our said Lady the Queen, and against the peace of our said Lady the Queen, her crown and dignity."

It was proved in evidence that the prisoner was a passenger in a public omnibus for hire, and that he exposed his person for a considerable distance, whilst the omnibus was passing along the New Road, in the presence of three or four females who were passengers therein, and who saw such exposure. It was contended on the

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

part of the prisoner that an omnibus was not a public place, and that the indictment was bad in law as it did not conclude "*ad commune nocumentum*," but only to the great scandal of the said (that is, of divers) liege subjects of our Lady the Queen. The jury found the defendant guilty, and the above points were reserved by the court. Judgment was postponed, and the defendant was committed to prison to abide the decision of this case. (b)

Ballantine for the prisoner.—An omnibus is not a public place for the purposes of this indictment. The publicity depends upon user, as appears plainly from the case of *R. v. Crunden* (2 Camp. 89), where the offence was bathing at Brighton as a sport on the beach, which had recently become so frequented or so overlooked as to make the bathing there a possible outrage on decency. On the other hand in *R. v. Orchard* (3 Cox C. C. 248), a public urinal was held not to be a public place, because it was enclosed, and what must be done therein could not be said to be a nuisance to the public. So in *R. v. Webb* (1 Den. C. C. 338), an indecent exposure of a man's person to a woman in a public passage, leading from the entrance door of a public-house to the bar parlour, was held not to be a public nuisance. The law makes a broad distinction between public and private nuisances—between such as are indictable and such as are not; and whether a nuisance falls under the one class or the other depends upon the extent of the annoyance which it occasions: (*R. v. Lloyd*, 4 Esp. 199.) Now an omnibus is both private property, and also an enclosed place; and is at least as private as the passage in a public-house. Secondly. The indictment ought to have concluded *ad commune nocumentum*.

MARTIN, B.—The precedent in Archbold is not so. It is, "to the great scandal."

Ballantine.—The other allegations there sufficiently supply that omission, because the exposure is alleged to be in "a certain public and common highway there situate." In this case there is neither express allegation nor necessary inference that the act done was a public nuisance. [LORD CAMPBELL, C. J.—Is not the defect cured by s. 24 of stat. 14 & 15 Vict. c. 100?] Not where the words are necessary to render the indictment valid.

Parry, contra.—The second count is clearly good according to the argument on the other side.

MARTIN, B.—The question as to that count is, whether there was evidence to support it; and that depends upon the answer to the question, whether an omnibus is a public place. In *R. v. Webb* the exposure was to one person only, and was intended to be an exposure to one person only.

Parry.—In this case the indecency was with a more general intent. (He was stopped.)

LORD CAMPBELL, C. J.—It would be a reproach to the law if this indictment was held not to disclose an offence; or this evidence not to support it. The exposure is shown to have been in a public

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Indecent
exposure—
Public place.

Argument.

Judgment.

(b) An application was made by the prisoner's Counsel to the court, to remit the case to the assistant judge to be re-stated; but not being made with his assent, it was refused

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exposure—
Public place.

Judgment.

omnibus going along a public high road, and in the omnibus were three or four females. What more can be wanting? This would not be a country to live in if such an abominable outrage could go unpunished.

PARKE, B.—We are asked two questions—first, Whether the omnibus was a public place for the purpose of this indictment? and secondly, Whether the indictment ought to have concluded *ad commune nocumentum*? I think that an omnibus may be a public place for the purpose of this indictment, and that if the evidence shows an exposure made designedly before more than one person, or so made that any one being in or coming in to the omnibus might see it, the omnibus is made out to have been at the time of the offence a public place, and that being so in this case the conviction is right. As to the other point, the statute 14 & 15 Vict. c. 100, s. 24, furnishes a complete answer.

MAULE, J., TALFOURD, J., and MARTIN B., concurred.

Conviction affirmed.

CENTRAL CRIMINAL COURT.

JUNE SESSION, 1853.

(Before ALDERSON, B.)

June 11.

REG. v. GRIFFIN. (a)

Privileged communication—Clergyman.

A chaplain to a workhouse had, in his spiritual capacity, frequent conversations there with the prisoner, who was charged with the murder of her child, but who was too ill to be removed from the workhouse: Semble, per Alderson, B., these conversations ought not to be adduced in evidence at the trial.

THE prisoner was indicted for the wilful murder of her infant child. Amongst other evidence, the chaplain of the workhouse, to which the woman was taken after she had inflicted the alleged injuries on the child, was called to prove certain conversations he had had with her with reference to the transaction. He stated that he had visited her as her spiritual adviser to administer to her the consolations of religion.

ALDERSON, B.—I think these conversations ought not to be given in evidence. The principle upon which an attorney is prevented from divulging what passes with his client is because without an unfettered means of communication the client would not have proper legal assistance. The same principle applies to a person deprived of whose advice the prisoner would not have proper spiritual assistance. I do not lay this down as an absolute rule; but I think such evidence ought not to be given.

Bodkin (for the prosecution), said that, after such an intimation, he should not tender the evidence.

Bodkin and Clerk for the prosecution.

Ballantine for the defence.

(a) Reported by B. C. ROBINSON, Esq., Barrister-at-Law.

CENTRAL CRIMINAL COURT.

JULY SESSION, 1853.

(Before the RECORDER.)

July 6.

REG. v. LEGGE. (a)

12 & 13 Vict. c. 106, s. 124—*Giving false evidence before Commissioners of Bankruptcy—Indictment—Allegation of materiality.*

An indictment under the 12 & 13 Vict. c. 106, s. 254, contained the following allegation of materiality: "And that at and upon the said examination of the said J. Legge, it then and there became and was material in and to the matter of the said bankruptcy, to inquire what was the nature and extent of the said J. Legge's connection and dealings with one Mr. Marshall, and how long he had known the said Mr. Marshall, and whether the said Mr. Marshall was a relation of the said J. Legge?"

The following was the evidence given by the defendant before the Commissioners of Bankruptcy: "Mr. Marshall is not in trade; he is a speculator in anything and everything. I have known Mr. Marshall about two or three years (meaning that he the said Joseph Legge had not known the said Mr. Marshall more than two or three years.) I imagine he was always a speculator, and never in business."

The assignment of perjury was in these words: "Whereas in truth and in fact, the said person so described as Mr. Marshall aforesaid, was one and the same person as one S. Marshall Legge, and was and is the father of the said Joseph Legge; and whereas in truth and in fact, the said Joseph Legge had known the said Samuel Marshall Legge, so described as Mr. Marshall as aforesaid, for a longer period than two or three years, to wit, for twenty years and upwards:"

Held, that there was no sufficient averment of materiality on the face of the indictment.

THE defendant was tried upon the following indictment:—
 Central Criminal Court, } The jurors for our Lady the Queen
 } to wit. } upon their oath present, that here-
 tofore, to wit, on the 2nd day of April, in the year of our Lord
 1853, a petition for adjudication of bankruptcy of Joseph Legge,
 hereinafter mentioned, and one John Legge, was, under and in
 pursuance of the statute made and passed in the session of Parliament
 holden in the 12th and 13th years of the reign of Queen Victoria,

intituled *An Act to amend and consolidate the Laws relating to Bankruptcy*, filed and prosecuted in the Bankruptcy Court of London; and the said Joseph Legge and John Legge, on the day and year aforesaid, duly became and were adjudicated to be bankrupts under and in pursuance of the said statute. And the jurors aforesaid, upon their oath aforesaid, do further present that afterwards, and whilst the proceedings upon and in respect of the said bankruptcy were depending in the said court, to wit, on the 4th day of April, in the year of our Lord 1853, the said Joseph Legge came before J. E., Esq., at the Bankruptcy Court-house in Basinghall-street, in the city of London, and within the jurisdiction of the Central Criminal Court, to be examined in the said Court of Bankruptcy, in the matter of the said bankruptcy, by and before the said J. E., Esq., touching the trade and dealings and estate of the said bankrupts Joseph Legge and John Legge aforesaid, he the said J. E. then being a commissioner of the said Court of Bankruptcy duly appointed, and empowered to act in the matter of the said bankruptcy; and then and there having lawful power and authority to examine the said Joseph Legge in that behalf; and the said Joseph Legge, before his examination and solemn declaration before the said J. E., Esq., hereinafter mentioned, made and signed the declaration, by the said act required by bankrupts to be made, and signed and countersigned in schedule W. of the said act above mentioned, which declaration is as follows, that is to say :—

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—
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*False evidence
before Commis-
sioners of
Bankruptcy.*

SCHEDULE W.

The Bankrupt Law Consolidation Act, 1849.

FORM of DECLARATION to be made by the Bankrupt or Bankrupt's wife.

In the Court of Bankruptcy,

Basinghall-street, London,
4th day of April, 1853.

I, Joseph Legge, one of the persons declared a bankrupt under a petition for adjudication of bankruptcy, filed on the second day of April, in the year of our Lord one thousand eight hundred and fifty-three, do *solemnly* promise and declare that I will make true answer to all such questions as may be proposed to me respecting all the property of me the said Joseph Legge, and all dealings and transactions relating thereto, and will make a full and true disclosure of all that has been done with the said property to the best of my knowledge, information, and belief.

J. E.

JOSEPH LEGGE.

And that at and upon the examination of the said Joseph Legge, it then and there became and was material in and to the said matters of the said bankruptcy, to inquire what was the nature and extent of the said Joseph Legge's connexion and dealings with one Mr.

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Marshall, and how long he had known the said Mr. Marshall, and whether the said Mr. Marshall was a relation of the said Joseph Legge.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said Joseph Legge did then and there, and within the jurisdiction of the Central Criminal Court, upon his said examination, and after making and signing the aforesaid declaration, falsely, corruptly, wilfully, knowingly and maliciously, before the said J. E., Esq., solemnly state and declare, amongst other things, in substance and to the effect following; that is to say, Mr. Marshall is the landlord of No. 4, York-terrace (meaning that he was landlord of a house numbered 4, in a street called York-terrace), in the town of Southampton; he is no relation of mine; I have not taken any part of that house (meaning the house aforesaid) Mr. Marshall is not in trade, he is a speculator in anything and everything. I have known Mr. Marshall about two or three years (meaning that he, the said Joseph Legge, had not known the said Mr. Marshall more than two or three years.) I imagine he was always a speculator, and never in business. Whereas in truth and in fact, the said person so described as Mr. Marshall, aforesaid, was one and the same person as one Samuel Marshall Legge, and was and is the father of the said Joseph Legge; and whereas in truth and in fact the said Joseph Legge had taken part of the house aforesaid; and whereas in truth and in fact he had known the said Samuel Marshall Legge, so described as Mr. Marshall as aforesaid, for a longer period than two or three years—to wit, for twenty years and upwards; and whereas in truth and in fact the said Samuel Marshall Legge was in trade as a cabinet-maker at Canterbury, in the county of Kent, at the time the said Joseph Legge so solemnly declared and affirmed as aforesaid, as he the said Joseph Legge then and there well knew. And so the jurors aforesaid, upon their oath aforesaid, do say that the said Joseph Legge did then and there, and within the jurisdiction of the Central Criminal Court, wilfully and corruptly give false evidence before the said J. E., Esq., the Commissioner as aforesaid, against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

The jury having found the defendant guilty on the first and third assignments of perjury, and acquitted him on the second and fourth:

Ballantine moved on his behalf in arrest of judgment. There was nothing to show in the indictment that the Mr. Marshall mentioned there was the same person as Samuel Marshall Legge, who was proved to be the father of the prisoner. There should, at least, have been an inuendo that "Mr. Marshall" meant "Samuel Marshall Legge," otherwise there was nothing to connect the allegation of materiality with the assignment of perjury.

Parry (with whom was *Byerley Thomson* for the prosecution), contended that the whole indictment must be looked at for the

purpose of construing the allegation of materiality, and by so doing it would clearly appear that the Mr. Marshall mentioned in the said averment, was the Samuel Marshall Legge referred to in the evidence, and in the assignment for perjury.

The RECORDER having some doubt about the case, consulted Mr. Baron Parke upon it, and upon a subsequent day he pronounced his decision, that the averment of materiality was insufficient to connect it with the other parts of the indictment, and therefore that judgment must be arrested.

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Judgment arrested.

Parry and Byerley Thomson for the prosecution.

Ballantine for the defence.

CENTRAL CRIMINAL COURT.

OCTOBER SESSION, 1853.

(Before CRESSWELL J., and WILLIAMS J.)

October 27.

REG. v. MOBBS. (a)

Murder—Previous acts of prisoner unaccompanied by any declaration.

On a trial for murder alleged to have been committed on the 24th August, semble, that evidence of acts done by the prisoner on the 13th August, unaccompanied by any declaration to explain them, is not admissible.

THE prisoner was indicted for the wilful murder of his wife. In the course of the evidence for the prosecution—

Bodkin (with whom was *Clerk* for the prosecution inquired of one of the witnesses what he had seen done by the prisoner to his wife on the 13th August.

Clarkson (for the prisoner) objected to the question.—Prior statements or declarations by a prisoner might be evidence to explain subsequent acts, but conduct alone, at so distant a period, could have no tendency to show subsequent intention.

Bodkin admitted there was no positive rule on the subject, but acts done might be quite as demonstrative of a future intent as

(a) Reported by B. C. ROBINSON, Esq., Barrister-at-Law.

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declarations made. He, of course, only sought to adduce it with reference to the issue of malice.

CRESSWELL, J.—I take it for granted, that no declaration accompanied the act sought to be proved. It is very difficult to draw the line in these cases, but I am rather inclined to reject this evidence.

Bodkin accordingly withdrew the question.

Bodkin and *Clerk* for the prosecution.

Clarkson for the prisoner.

CENTRAL CRIMINAL COURT.

OCTOBER SESSION, 1853.

October 27.

(Before Mr. COMMISSIONER GURNEY.)

REG. v. WOODS AND MAY. (a)

Practice—Each of two prisoners seeking to throw the onus of the crime on the other—Right of each to cross-examine witnesses of the other—Second address to the jury.

Two prisoners were indicted for manslaughter, the counsel for one of them having addressed the jury on his behalf, the counsel for the second prisoner did the same, and called witnesses, whose evidence tended to show negligence on the part of the first

Held, that the counsel for the first prisoner had a right to cross-examine the witnesses for the second, and then to address the jury again, confining himself to comments on the testimony the second prisoner had adduced.

THE prisoners were indicted for manslaughter; they were the drivers of rival omnibuses, and while racing on the day in question the deceased was knocked down by one of them, and received injuries of which he subsequently died; but there was conflicting testimony as to which of the vehicles struck him.

(a) Reported by B. C. ROBINSON, Esq., Barrister-at-Law.

At the close of the case for the prosecution, *Ballantine* (for the prisoner Woods), addressed the jury but called no witnesses.

Parry (for the prisoner May), then addressed the jury, and called witnesses who threw the blame on the prisoner Woods.

Ballantine claimed the right of cross-examining these witnesses and afterwards of addressing the jury again.

MR. COMMISSIONER GURNEY.—Can you refer me to any case in which this has been done?

Ballantine was not aware of any case upon the subject, but there could be no objection to such a course on principle, and it would be a grievous injustice to a prisoner, if, when evidence was adduced against him, whether it proceeded from a co-defendant, or from the prosecution, his counsel had no opportunity afforded him of explaining it, either by cross-examination or by comment.

Parry submitted that there was no authority for allowing this course to be taken, and it would subject the prisoner for whom he appeared, to the disadvantage of having his case attacked, not only by the counsel for the prosecution, but by that of his fellow prisoner.

Woollett, for the prosecution, would leave the matter to the court without observation.

MR. COMMISSIONER GURNEY retired to consult Mr. Justice Cresswell and Mr. Justice Williams in the adjoining court, and on his return said:—

Both the learned judges think as I do, that Mr. *Ballantine* should be allowed not only to cross-examine Mr. *Parry*'s witnesses, but again to address the jury. The proper course will be for Mr. *Ballantine* to cross-examine first, Mr. *Woollett* will then cross-examine on the part of the prosecution, and Mr. *Parry* may re-examine. At the close of the evidence, Mr. *Ballantine* will address the jury confining himself strictly to the evidence adduced on the part of May, and Mr. *Woollett* will then reply generally.

Both Guilty.

Woollett for the prosecution.

Ballantine for the prisoner Woods.

Parry for the prisoner May.

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dence.

COURT OF CRIMINAL APPEAL.

November 12, 1853.

(Before JERVIS, C. J., POLLOCK, C. B., PARKE, B.,
COLERIDGE, J., and WILLIAMS, J.)

REG. v. VODDEN. (a)

Mistake of foreman in delivering verdict of jury.

Upon the trial of an indictment, one of the jurors, by mistake, delivered a verdict of "not guilty," which was heard and taken down by the chairman and the clerk of the peace. The prisoner was discharged out of the dock, but other jurymen immediately called attention to the mistake, and the prisoner was brought back.

Held that the right verdict might then be taken.

THE prisoner was tried for larceny at the Glamorganshire Quarter Sessions, 1853, when the following case was reserved:—

Owen Hughes, one of the jurors, delivered a verdict of not guilty, which was entered by the clerk of the peace on his minutes, from which the record is made up, and also by the chairman, who heard the words "not guilty," on his note book. Prisoner being thereon discharged out of the dock, others of the jury interfering, said, the verdict was "guilty." Then the prisoner being brought back into the dock, the chairman asked the jury what the verdict was? All the twelve jurors answered that it was "guilty," and that they had been unanimous; the chairman then asked Owen Hughes why he had said "not guilty?" to which he replied that he had said "guilty;" the chairman then directed a verdict of "guilty" to be recorded.

Giffard, for the prisoner.—The wrong verdict is now on the record of the court.

PARKE, B.—On the contrary, a wrong verdict was taken in the first instance, and corrected on the spot.

POLLOCK, C. B.—The old form was for the clerk to say "hearken to your verdict while the court records it," &c., which afforded an opportunity of correcting a mistake.

PARKE, B.—This shows the importance of adhering to the old forms.

Giffard.—Some interval ought to be fixed within which a correction may be made.

POLLOCK, C. B.—We cannot fix any—We say only that the interval in this case was not too long; we are all agreed that what took place was quite right; it is what constantly occurs in the ordinary transactions of life,—a mistake was corrected within a reasonable time, and on the very occasion on which it was made.

Conviction affirmed.

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

COURT OF CRIMINAL APPEAL.

November 12, 1853.

(Before JERVIS, C. J., POLLOCK, C. B., PARKE, B.,
COLERIDGE, J., PLATT, B., and WILLIAMS, J.)

REG. v. REASON. (a)

*Larceny of letters—What an employment under the Post Office—
7 Will. 4 & 1 Vict. c. 36, ss. 26, 47.**A letter carrier, whose duty was ended when he had delivered the bags to the postmaster at F., stole a letter containing a shilling, after he had delivered the bags but whilst he was assisting at the postmaster's request in sorting the letters.**Held, that he was at the time of the larceny a person employed under the post-office, within the meaning of the 7 Will. 4 & 1 Vict. c. 36.*

THE following case was reserved by Platt, B. :—

At the last assizes holden at Cardiff, William Reason was indicted under the 1 Vict. c. 36, s. 26, for stealing a post letter containing money. The indictment contained also a count for simple larceny. The jury found him guilty. From the month of November 1852, until and upon the day of committing the offence, William Reason was employed under the post-office as a carrier of letters from Cwm Avon to Fayback, in Glamorganshire. The letters were delivered to him in a sealed bag, which it was his duty to deliver as he received it to the postmaster at Fayback, and on such delivery to the Fayback postmaster, the performance of the duty of his employment was complete.

On the morning of the day on which the offence was committed, he brought from Cwm Avon the sealed bag containing letters, and delivered it safely at the Fayback post-office to the Fayback postmaster, whose duty it was to sort the letters in time to make up the bags for the mail passing through that town.

The prisoner Reason, on being requested by the Fayback postmaster to assist in the sorting of the letters consented to do so, and while he was proceeding in the assortment, contrived to steal one of the letters. That letter contained a shilling.

Giffard, the prisoner's counsel, submitted, that upon these facts the offence did not fall within the 26th section of the act, as the sorting formed no part of the prisoner's employment under the post-office, but that the assistance he had consented to render in sorting the letters was merely gratuitous, and rendered to the postmaster for his personal accommodation only.

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letter—Employ-
ment under
post-office.*

Evans, on the part of the prosecution, contended that the facts brought the offence within the 26th section as interpreted by the 47th.

Having doubts upon the subject, I postponed the judgment until the next assizes, in order that the prisoner might have the benefit of the question thus raised being considered and decided by Her Majesty's Judges, and of their directing upon which of the two counts the verdict should stand.

The stat. 7 Will. 4 & 1 Vict. c. 36, s. 26, enacts that every person employed under the post-office, who shall steal, or shall for any purpose whatever embezzle, secrete, or destroy a post letter, shall be guilty of felony; and if any such post letter so stolen or embezzled, secreted, or destroyed, shall contain therein any chattel or money whatsoever, or any valuable security, every such offender shall be transported beyond the seas for life. The 47th section, which is the interpretation clause, enacts, that the expression "person employed by or under the post-office," shall include every person employed in any business of the post-office, according to the interpretation given to "officer of the post-office," and the expression "officer of the post-office," is declared to include the Postmaster-General, and every deputy-postmaster, agent, officer, clerk, letter-carrier, guard, post-boy, rider, or any other person employed in any business of the post-office, whether employed by the Postmaster General, or by any person under him, or on behalf of the post-office.

Argument.

Giffard, for the prisoner.—There must be a limitation of some kind upon the extreme generality of the words of the act of Parliament; and it is submitted that in order to bring a person within the intention of the statute, he must, at the time of the offence committed, be in the discharge of some authorized official employment, affording him the means of committing it. The highly penal character of the enactment leads to the supposition that it was meant to apply only to cases in which the regularly appointed servants of the post-office abused the special trust reposed in them, and availed themselves of the facilities afforded by their office for committing offences. In *R. v. Glass* (1 Den. C. C. 215, 2 Car. & K. 395), it appeared that the prisoner was a letter carrier between Westbury and Great Chevril, and that with the letters which it was his duty to carry from Great Chevril to Westbury, he also received from the postmaster two envelopes, each containing a 5*l.* note, with which he was desired to procure two money orders at Westbury, to be forwarded in the envelopes. The jury having found that he had no intention of stealing the notes when he received them at Great Chevril, the judges held a conviction for larceny wrong; which shews clearly that they must have held in that case that he was not, as regarded those envelopes, a person employed under the post-office within the meaning of this act of Parliament.

COLERIDGE, J.—But in that case it was expressly found, that "it was no part of the duty of the postmaster at Great Chevril to

procure money orders from Westbury, or to forward instructions to the postmistress at Westbury respecting them."

POLLOCK, C. B.—In this case it was part of the duty of the postmaster at Fyback to sort the letters.

COLERIDGE, J.—It often happens that the postmaster requires assistance for that purpose; and has it ever been questioned that the wife or the son of the postmaster assisting him in that duty would be responsible as persons employed under the post-office.

Giffard.—In *R. v. Milner* and *R. v. Simpson* (4 Cox C. C. 275) the prisoners were chemists' assistants, who occasionally assisted in making up the bags: and both Cresswell, J., and Patteson, J., doubted whether they could be considered in the employment of the post-office, until it was proved that they had taken the oath usually required to be taken by persons so employed.

PARKE, B.—The point which is made here, did not arise in those cases.

JERVIS, C. J.—The only difficulty arises from the very largeness of the definition; but that may be intentional. It is said that an information will lie in the Exchequer against a brewer who may have Cayenne pepper on his table, and in these matters the object is to make the law extensive enough to prevent fraud, leaving the administration of it to the discretion of the proper officers.

Giffard.—If this prisoner is to be considered as a person who was employed under the post-office at the time when he took the letter in question, any casual bystander might also be brought by the same rule under these severe penalties. It is impossible to know where to draw the line, if you do not stop with legitimate official responsibility.

POLLOCK, C. B.—Why should you be able to draw it any where, except where the statute draws it. I believe we are all clearly of opinion, that this person fell within the definition of "employed under the post-office." He is certainly within the exact terms of it, for he was employed by the postmaster who was employed by the Postmaster General.

JERVIS, C. J.—After the doubts which were expressed in *R. v. Milner* and *R. v. Simpson*, it is well that this case should have been reserved; because by this decision the question will be finally settled. None of us entertain any doubt that the prisoner was a person employed under the post-office, so as to bring the case within the operation of sect. 26.

Conviction affirmed.

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letter—Employ-
ment under
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COURT OF CRIMINAL APPEAL.

November 12, 1853.

(Before JERVIS, C. J., POLLOCK, C. B., PARKE, B.,
COLERIDGE, J., and WILLIAMS, J.).

REG. v. KEZIA SNELLING. (a)

*Forgery—Order for payment of money—Evidence to supply absence of
a direction—Stat. 11 Geo. 4 & 1 Will. 4, c. 66.**An indictment for forging an order for the payment of money, is supported by proof of a forged document, containing the words "Sirs, please to pay," &c., which, though not addressed to any one, was proved to have been presented to the bankers of the party whose signature was forged, with a representation that it was intended for them.*

THE following case was reserved by Jervis, C. J. :—

On the 30th of March last, the prisoner called at the bank of the Messrs. Alexander, at Hadleigh, where Mr. Ramsay, a farmer, at Holton, kept an account, and said that she had called for 800*l.* which she had deposited with Mr. Ramsay; that Mr. Ramsay had told her she might have it if she called, but that she did not know whether it was in her name or his. The clerk told her he could not pay her without an order, to which she replied, that Mr. Ramsay had said an order would not be necessary, and went away. Upon the next day, she came again to the bank, and handed to the cashier a forged paper, of which the following is a copy :—

Holton, March 31, 1853.

Sirs,—Pleas to pay the Bearis, Mrs. Smart, the sum of eight hundred & 50, 4*l.* ten shillings, for me. JAMES RAMSAY.

This paper was folded in the shape of a letter, addressed outside, "Mrs. Smart." The cashier asked the prisoner if her name was Smart. She said, yes. He then asked her if she had seen Mr. Ramsay write the order. She said, no; he had handed it to her. The cashier did not pay the money mentioned in the paper. Upon cross-examination, he said, that if he had seen Mr. Ramsay write it, or had known that it was his writing, he should have treated it as an order, and have paid the money, although it was not addressed to Messrs. Alexander. Mr. Ramsay proved that the paper was a forgery, and the prisoner having been convicted, I reserved the question, whether the paper above set forth was, under the circumstances, an order for the payment of money within the statute.

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

Dasent, for the prisoner.—This instrument wants one of the ingredients necessary to constitute an order for the payment of money within the meaning of the stat. 11 Geo. 4 & 1 Will. 4, c. 66, s. 3. The three things required are, a drawer, a payee, and a person to whom the order is addressed; but here the supposed order is not addressed to any one.

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Forgery—
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POLLOCK, C. B.—Is that always necessary? If I give my bankers instruction to pay A. B. a sum of money, and I afterwards send him with a written order for the payment of that sum to him, is that less an order for the payment of money because not addressed to any body? In *Carney's case* (1 Moo. C. C. 351), a request for the delivery of goods was not addressed to any one, but the fact for whom it was intended was supplied by evidence.

Dasent.—That depended upon a previous course of dealing, a practice of obeying instruments in the same form; and so it was in *R. v. Rogers* (9 C. & P. 41), where the ground taken was, that if the instrument had been genuine, it would have been an authority to a certain person to pay the amount.

PARKE, B.—Does not the delivery to the cashier supply by evidence the omission of a particular address on the face of the order?

Dasent.—*R. v. Clinch* (2 East P. C. 938; 1 Leach, 540), is in point. It was there held, that a forged order for the delivery of goods was not within the stat. 7 Geo. 2, c. 22, unless it were directed to the person who had the goods; and that is reasonable; because there can be no obligation on any one to obey such an order, nor would such a document alone warrant any one in obeying it.

JERVIS, C. J.—*R. v. Carney* (1 Moo. C. C. 351), is a decision the other way. The request in that case was not addressed to any one. Would not the instrument in this case have been a voucher for the bankers, if it had been genuine, and they had paid it?

Dasent.—It is submitted that it would not; because, if it would have been a good voucher for the Messrs. Alexander, it would have been an equally good voucher for anybody else who chose to pay it, and had money of Mr. Ramsay's in their hands.

POLLOCK, C. B.—If the evidence shows for whom it was intended, that is enough.

JERVIS, C. J.—The distinction between this case and *R. v. Clinch* is, that there the question arose upon the indictment; here it arises upon the evidence. The instrument must appear to be an order; and in *R. v. Clinch*, it did not appear to be so upon the face of the indictment. Here the evidence shows it to be so. An instrument which does not appear upon the face of it to be an order or request, may be explained to be so by averment and evidence, as was held in *R. v. Cullen* (1 Moo. C. C. 300.)

Dasent.—There the instrument was not addressed to any one; and the judges held it to be neither order or request, there being no explanation of the instrument. Here there was no evidence to explain the instrument beyond the evidence of the uttering. The

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case of *R. v. Ravenscroft* (R. & R. C. C. 161), is also an authority for the prisoner. In that case the instrument was, "Please to pay the bearer on demand 15*l*," signed by the prisoner in his own name, but not addressed to any one. When that instrument was uttered, the following words and signature had been forged upon it, "payable at Messrs. Masterman & Co., White Hart Court.—Wm. McInchary." Wm. McInchary kept cash at Masterman's, but it was not proved that Messrs. Masterman were bankers; and nine judges held, that this was not an order for payment of money.

Worlledge, for the Crown.—Upon the evidence in this case, the instrument uttered is shown to be an order for the payment of money. It answers the test suggested by Jervis, C. J., in *R. v. Dawson* (2 Den. 75.) If the document had been genuine, and payment made under it, it would have afforded a defence to an action.

WILLIAMS, J.—The instrument in *Dawson's case* bore an address; but suppose the present instrument were presented to a wrong party, would it justify a payment by him?

Worlledge.—It would, at all events, be an authority to the party for whom it was intended. In *Reg. v. Pulbrook* (9 Car. & P. 37), Lord Denman held an instrument in the following form, not addressed to any one, to be a request for the delivery of goods, within the statute:—"Aug. 3, 1839. One 16 in. helmet scoop, &c.—Jas. Hayward." *Carney's case* is to the same effect; and both are subsequent to *R. v. Clinch*. The latter, however, is distinguishable upon the ground pointed out by Jervis, C. J.

WILLIAMS, J.—*R. v. Carney* and *R. v. Pulbrook*, were cases of requests, not orders; and there is this difference between them, that an order imports that the person to whom it is addressed is bound to obey it. Here the instrument itself does not order anybody.

Worlledge.—In *R. v. Vivian* (1 Car. & K. 719), the document was addressed to the bankers' clerk, and the signature forged was that of the foreman to the man who kept the account; and the judges held that the instrument was a warrant for the payment of money. Coleridge, J., in pronouncing the judgment, said: "any instrument for payment under which, if genuine, the payer may recover the amount against the party signing it, may properly be considered a warrant for the payment of money, and it is equally this, whatever be the state of the account between the parties, and whether the party signing it has, at the time, funds in the hands of the party to whom it is addressed or not." If Mr. Ramsey had two bankers, this instrument would warrant either in paying, and in its terms it imports an order upon some one. The statute does not require that the instrument should be addressed to any one, and it is enough, if the evidence shows upon whom the order was in fact made. Upon an indictment for uttering a forged acceptance on a bill of exchange, it was held in *R. v. Hawkes* (2 Moo. C. C. 60), that though no person was named in the bill as drawee, the indictment might be sustained.

Argument.

Dasent, in reply.—The cases cited relate to requests, which differ from orders in this, that the latter must have reference to some person who is compellable to pay.

JERVIS, C. J.—This conviction must be affirmed. Even if there was a conflict of authorities (which, in my opinion, there is not), we should be bound by the recent cases respecting requests. But, in truth, with a single exception, the cases are identical. The only difference between an order and a request is, that a request purports to be made without authority to command; an order with such authority; and it is admitted that this paper, if addressed to Messrs. Alexander, would have been an order. The question therefore is, whether the absence of those words prevents it from being an order? I think that the cases show those words not to be necessary. The statute relates to orders, receipts, and requests, and, with a single exception, the cases show that these writings are subject to the same rules. Writing a name at the foot of a bill may be the forgery of a receipt, but it is not necessarily so; and in such a case evidence is necessary to explain that the signature amounts to a receipt. So a written request, if not addressed to any one, may not be a request within the statute, but the conduct of the party may be used to show that he intended it as a request to a particular person. In *R. v. Cullen*, it was held that a request need not be directed to any one; and so in *Carney's case*. In *R. v. Fulbrook*, the previous decisions were followed by all the judges. Then, does the case of *R. v. Clinch* differ from these? I think clearly not. As the law stood at that time, it was necessary to show by averment, on the face of the indictment, that the order was addressed to some one; because the instrument could not be an order unless made on somebody; but now, by a recent statute (2 & 3 Will. 4, c. 123, s. 3), the instrument may be described in the same manner as in an indictment for larceny of it; (a) and the effect of the statute is to make that a sufficient description which gives to the instrument the character which the evidence shows it to bear. In *R. v. Clinch*, it was not averred, and it was not proved that the order was made on any one. Here also it is not averred; but the statute has rendered that immaterial, and the proof may supply it. Suppose that the word "Sirs" upon these cheques always meant "Messrs. Alexander," would not that order do? It would, when that meaning of "Sirs" was explained. In *R. v. Clinch*, the indictment was for forging an order for the delivery of goods; and the words of the instrument were words of request only,—“please to send.” Here the language is “please to pay,” which imports an order; and for the present purpose there seems to me to be a material difference between the two. When, therefore, the cases are closely ex-

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Judgment.

(a) By stat. 14 & 15 Vict. c. 100, s. 5, it is enacted that “in any indictment for forging, uttering, stealing, embezzling, destroying or concealing, or for obtaining, by false pretences, any instrument, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or fac-simile thereof, or otherwise describing the same, or the value thereof.”

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mined, it appears to me that they do not conflict; and that in order to constitute an order for the payment of money within the meaning of the statute, the instrument must either appear, upon the face of it, to be addressed to some one. or must be explained by the evidence to have been, in fact, made upon some one.

POLLOCK, C. B.—I am of the same opinion. No doubt, if the cases were conflicting, we should be bound by the latest; but, in my opinion, there is no conflict of authority upon this question; and, looking at it upon principle, I cannot entertain any doubt that this is an order. Suppose the prisoner's representation to have been true, and the instrument genuine, is it not such an order as, if paid, would have discharged the banker? I think it is; and that the circumstances proved supply the want of a formal direction on the face of it. If Mr. Ramsay had, in fact, sent the prisoner to the bank; and she, having been told that they would not pay her without an order, had obtained one from him, and come back the next day with this genuine document, it would then have been a good order; so it is now a sufficient form of order to satisfy the statute. It is addressed "Sirs," and delivered by the prisoner to the person for whom she represents it was intended; and therefore I say that, according to the intention of the statute, the plain meaning of words, and the nature of the whole transaction, it is an order for the payment of money.

Judgment.

PARKE, B.—I entirely concur in the judgment of the court. This instrument, on the face of it, purports to be an order for the payment of money; and I am not at all satisfied that an order for the payment of money requires any more than a request that the name of the party addressed should appear upon the face of it. In some cases, a person to whom the order is addressed must be shown; and in all it must be shown that there was an intent to defraud; but this instrument being in the form "please to pay" money, I am not satisfied that there is not enough on the face of it to make it an order, without showing who was meant. Even if that is not so, I agree that the case is governed by those relating to "requests," and that *R. v. Clinch* has been properly distinguished.

COLERIDGE, J.—I also am of opinion that this is, at all events, such an instrument as may be explained by evidence to be an order for the payment of money; and that being so, it is unnecessary now to express any opinion upon the point suggested by my brother Parke, that this is, on the face of it even, and without explanation, an order for the payment of money; because, assuming it to be necessary, in order to constitute an order, that there should be some person to whom it is addressed, the cases have established (without any conflict, as I think), that the name of that person need not appear on the instrument, but may be supplied by the evidence.

WILLIAMS, J.—The doubts which I have felt in the course of the argument as to the distinction attempted to be drawn between this case and *R. v. Clinch*, have not been removed, and I have the

misfortune to differ from the rest of the court in still thinking that that case is an authority in point. I cannot bring myself to think, that in that case the judges meant to lay down that an order need not be addressed to the party who is to obey it. The subsequent cases, however, of *R. v. Carney*, and *R. v. Pulbrook*, have decided that a request need not specify who is the party requested; and although I thought at first that the case of an order might be distinguished from that of a request, I do not retain that opinion; and I agree that the principle to be extracted from those later cases must govern this. Upon that ground, therefore, I think that this conviction is right.

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Conviction affirmed.

COURT OF CRIMINAL APPEAL.

November 19, 1853.

(Before POLLOCK, C. B., PARKE, B., COLERIDGE, J., PLATT, B.,
and WILLIAMS, J.)

REG. v. STONE. (a)

*Perjury—Affidavit sworn before a Master Extraordinary—Proceedings
in the Admiralty Court.*

A Master Extraordinary of the Court of Chancery has no authority to administer an oath and take an affidavit to be used in a suit in the Admiralty Court, although the practice of that court is to receive affidavits so sworn; and the offence of perjury cannot be committed in an affidavit so taken, but to make such an affidavit falsely with a view to its being used in the Admiralty Court, would be a misdemeanor at common law.

THE following case was stated by Erle, J. :—

At the York Summer Assizes, 1853, the prisoner was found guilty of perjury in an affidavit used in the Court of Admiralty, in a suit for salvage; the affidavit was sworn before a Master Extraordinary in Chancery, and upon objection that this officer had no authority to take an affidavit to be used in the Court of Admiralty

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

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evidence was adduced that the practice of the Court of Admiralty had been to receive affidavits so sworn, &c. (1 W. Robins Ad. Rep. 174, *The Reward*, Hogg; 6 & 7 Vict. c. 82 were cited.) The prisoner was admitted to bail, and the question for the decision of the court is, whether this conviction is valid?

Cross, for the prisoner.—This conviction is wrong; the oath was administered to the prisoner by a person who had no jurisdiction to administer it: for a Master Extraordinary of the Court of Chancery as such, has no authority to take an affidavit to be used in the Court of Admiralty. Masters Extraordinary are appointed by virtue of the general jurisdiction of the Lord Chancellor; by order, and not by commission; they differ from the ordinary Masters of the Court, who appear to have existed as long as the Court itself, but Extraordinary Masters were appointed in Sir Christopher Hatton's time, for the purpose of taking oaths at a distance from London; at first the limit was three miles, but it was afterwards extended to twenty miles. With regard to the practice of the Court of Admiralty in receiving these affidavits, upon whatever ground that practice rests, it cannot have the effect of conferring on the Master a jurisdiction to administer an oath, which otherwise he would not possess. (He was stopped.)

Perronet Thompson, for the Crown.—The practice of the Admiralty Court is material in this point of view—that it does in effect render the Masters Extraordinary officers of the Court of Admiralty for the purpose of taking affidavits.

PARKE, B.—How can it affect the question of jurisdiction, upon which the offence of perjury depends? It may have the effect of rendering any one who is aware of it guilty of a misdemeanor, if he makes a false statement with a view to its being used before that court; but that is a different offence.

P. Thompson.—It is clearly considered in the Admiralty Court that the Masters Extraordinary have jurisdiction, and that the offence of perjury may be committed in an affidavit like this. The case of "*The Reward*" (1 W. Robinson's Adm. Rep. 174) shows this in the clearest manner. That was a case of salvage, and at the opening of the argument, the admission of three affidavits was opposed on the ground that they had been sworn before a Master Extraordinary, and the jurat omitted any mention of the place where they had been sworn. This was required by an order of the Court of Chancery, made by Lord Chancellor Clarendon in 1661 (see Beames' Gen. Ord. Ch. p. 212); and it was contended that as the Masters Extraordinary derived their authority from that court, the validity of their acts depended upon a due observance of its orders; to which it was answered that the Court of Admiralty had issued no directions as to the form of the affidavit to be used there, and that "in a variety of cases similar affidavits had been received by the registrar and admitted as evidence by the court, in which the insertion of the place where sworn, had been altogether omitted." Then the judgment of Dr. Lushington was given in these words: "I think the court is bound to

sustain the objection which has been raised in the present instance. The affidavits in question purport to have been sworn before a Master Extraordinary in Chancery, who derives his authority solely from the appointment of that court. Upon the face of these affidavits, it appears that the order of the Court of Chancery has not been complied with in the form in which they have been taken. It is clear therefore, that they would not be received as admissible evidence in proceedings in the Court of Chancery; and it would, I conceive, be an anomaly if I should admit them as evidence in this court. Another reason why they should not be admitted arises from the circumstance adverted to by the counsel for the owners, viz.: that the authority of the Masters Extraordinary in Chancery is confined within certain limited distances. How is the court to ascertain whether these affidavits have been properly taken within the prescribed distances, unless the fact is duly certified in the jurat? They may have been taken by the Master beyond the limits of his authority; in that case they would be a mere nullity; however false their depositions might be, the witnesses could not be prosecuted for perjury. Would it not then be detrimental to the attainment of justice that such evidence should be received which supposing it to be wilfully false, should be of a kind or taken in a manner that would not stand the test of an inquiry in a Criminal Court? For these reasons I must reject these affidavits, and I direct the practice in the registry to be altered in future; at the same time as it has been stated to the court that similar documents have been heretofore received as evidence, I shall give the salvors the opportunity of having the affidavits re-sworn." It is evident therefore, that in the Court of Admiralty no doubt is entertained as to the jurisdiction of the Masters Extraordinary to take these affidavits; and this opinion may well be founded upon the circumstance that the Court of Chancery itself has an Admiralty jurisdiction, and that Masters in Chancery appear to form part of the original machinery of that Court. "*Cancellario associantur clerici honesti et circumspetti, domino Regi jurati, qui in legibus et consuetudinibus Anglicanis notitiam habent pleniorum, quorum officium sit supplicationes et querelas conquerentium audire et examinare et eis super qualitatibus injuriarum ostensarum debitum remedium exhibere per brevia regis.*" (Fleta, lib. 2, c. 13; 2 Inst. 407; Com. Dig. Chancery B. 5.) In Co. Litt. 260, a, b., it is said "if a man be upon the sea of England he is within the kingdom or realm of England, and within the ligeance of the King of England, as of his crown of England, and yet *altum mare* is out of the jurisdiction of the common law and within the jurisdiction of the Lord Admiral, whose jurisdiction is very antient." There are many authorities shewing that this ancient Admiralty jurisdiction may be exercised by the Court of Chancery; and there seems good reason for supposing that the Masters were commissioners for both courts. Mr. Edwards, in a note to p. 8 of his "Treatise on the Jurisdiction of the High Court of Admiralty of England," says, "An ordinance of Richard I. is also quoted by Prynne, as extracted from the Black

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Book of the Admiralty, made at Grimsby, to the effect that if the admiral by the King's command arrested any ships for the King's service, and he or his lieutenant returned *and certified the arrest into Chancery*, the master or owner could not be admitted to plead against the return." So in 31 Hen. 6, Rot. Parl. vol. 5, p. 268, No. 68, "to the King our Sovereigne Lord by the avis and assent of the Lords spiritual and temporal, and the Commons of the realme &c., to ordein and establish that if any of his subjects attempt or offende upon the see or in any porte or against any person or persons estraungiers &c., or against any other persons of youre liege people, the Chancellor of England for the tyme beyng as for deliverance of any such person, &c., or for restitution to be made to every such person so robbed or despoiled of shipp, or godes, or of the value thereof, have authority callyng to hyme any of the juges of the one or other bench upon bille of complaynt *to make such process out of the said Chancerie as well against all such offenders to bring them into the Kings Chancerie there to answer to the parties in general.*" The stat. 25 Hen. 8, c. 19, s. 4, provides "for lack of justice at or in any the courts of the Archbishops of this realm," that the parties grieved may appeal to the King's Majesty in the King's Court of Chancery, and that upon every such appeal a commission shall be directed under the Great Seal to such persons as shall be named, &c. *like as in case of appeal from the Admiral's Court.*" Again, the jurisdiction is asserted in stat. 8 Eliz. c. 5, which recites its object to be "for the avoiding as well of long and tedious suits, as also of great charges and expenses in prosecuting of civil and *marine causes* by reason of divers appeals permitted to be made," &c. and enacts that all and every such judgment and sentence definitive, as shall be given or pronounced in any civil and *marine cause, upon appeal lawfully to be made therein to the Queen's Majesty in her Highness's Court of Chancery*, by such commissioners or delegates as shall be nominated, &c., as it hath been heretofore used in such cases, shall be final, &c. So in the MSS. of Lord Nottingham, as given in the Appendix to 3 Swanst. Rep. 604, there is a case of *Blad v. Bamfield*, 21 Nov. 26 Car. 2 (1694), in which, upon application for a perpetual injunction to restrain proceedings against a Dane for the seizure of property of English subjects in Ireland, the seizure being sanctioned by the Danish authorities, the Lord Chancellor said:—"I think never was any cause more properly before the court than the case in question—first, as it relates to a trespass done upon the high seas, and though it may seem to belong to the cognizance of the Admiral, yet I took the occasion to show that the Court of Chancery hath always had an Admiralty jurisdiction, not only *per viam appellationis* but *per viam evocationis* too, and may send for any cause out of the Admiralty to determine it here: of which there are many precedents in Noy's MSS. 88; and in my little book, in the preface *de officio Cancellarii*, s. 18, and in my parchment book, tit. Admiralty. In *Deneu & Cullen v. Stock* (Rep. Cas. in Ch. temp. Finch, 437), the defendant having obtained a decree in the Admiralty of

the Cinque Ports, whereby a ship was adjudged to him, the Lord Warden granted a commission of delegates to review the sentence—and upon the hearing of the appeal, the former sentence was revoked, and a bond into which the appellant had been obliged to enter in the court below, was ordered to be delivered up and cancelled. The plaintiffs were his sureties in that bond and sought relief in Chancery from an action of debt which the defendant had brought upon the bond, notwithstanding the reversal. The defendant demurred to the bill for not setting forth that the Lord Warden had power to grant a commission of delegates, and contended “that by the laws of this realm all commissions of appeal and review are to be granted by the King out of this court and not elsewhere.” The court would not determine whether the Lord Warden had a power to grant a commission of delegates; but the Lord Chancellor declared, “*that though this court hath an Admiralty jurisdiction, yet it could not be exercised in this case, because the time for bringing the appeal was lapsed, which ought to have been done within fifteen days after the sentence.*”

COLERIDGE, J.—Assume that there is a concurrent jurisdiction, still the question arises, whether the officers of the Court of Chancery have authority to administer the oath, whilst the cause remains in the Admiralty Court.

P. Thompson.—The authorities show how the practice has originated, and how the Masters Extraordinary have come to be regarded for this purpose as officers of the Admiralty Court. Argument.

PLATT, B.—There is no evidence of their ever having been appointed officers of that court.

PARKE, B.—What is the earliest instance of the practice?

P. Thompson referred to the case of *The Sylvan*, 2 Hagg. Ad. Rep. 155; where, in a case of damage by collision, an affidavit sworn in Scotland before a commissioner for taking bail in prize causes, was held irregular.

PLATT, B.—There the court said, “it has been usual to require such affidavits to be made here, or to be taken by commission;” “made here” must mean here in court.

COLERIDGE, J.—I don’t see how that case makes out the practice.

P. Thompson.—Perhaps the statute 14 & 15 Vict. c. 99, s. 16, may be thought to apply to this case. It enacts, that “every court, judge, justice, officer, commissioner, arbitrator or other person, now or hereafter having by law, or by consent of parties, authority to hear, receive and examine evidence, is hereby empowered to administer an oath to all such witnesses as are legally called before them respectively.”

COLERIDGE, J.—How can that apply here. The Master Extraordinary was not authorized either by law or by consent of the parties to receive evidence.

Cross was not heard in reply.

POLLOCK, C. B.—I am of opinion that this conviction is wrong, because the affidavit was sworn before a Master Extraordinary,

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who has not, by any commission, jurisdiction to administer an oath in matters arising in the Court of Admiralty. The fact that the Court of Admiralty has acted, or will act on such an affidavit, cannot confer authority to administer the oath: and it may be, that that court has chosen to act upon affidavits so sworn, because any person who falsely made such an affidavit in order to impose upon the court, would unquestionably be guilty of a misdemeanor, though he could not be convicted of perjury.

PARKE, B.—I am of the same opinion. The office of a Master in Chancery is coeval with the history of that Court; and there is no restriction on the Lord Chancellor as to the number of such Masters he may make. That, however, affords no proof that the Masters have authority to take affidavits on oath in Admiralty suits, and which are to be afterwards used in the Court of Admiralty. The authorities relied on for the prosecution show, that on a proceeding in Chancery, if the Court of Chancery has Admiralty jurisdiction, the Masters might take an affidavit; but that proves nothing when the cause is in the Court of Admiralty. I quite agree, that the party making the false affidavit with a view to its being used in the Admiralty Court, would be guilty of a misdemeanor—for he would thereby attempt to defraud a court.

Coleridge, J., Platt, B., and Williams, J., concurred.

Conviction quashed.

COURT OF CRIMINAL APPEAL.

November 19, 1853.

(Before POLLOCK, C. B., PARKE, B., COLERIDGE, J.,
WILLIAMS, J., and CROMPTON, J.)

REG. v. BAILEY. (a)

*Possession of implements of housebreaking—Intent to commit felony—
Stat. 14 & 15 Vict. c. 19, s. 1.**By stat. 14 & 15 Vict. c. 19, s. 1, it is made a misdemeanor if any person shall be found by night having in his possession, without lawful excuse (the proof of which shall lie on such person), any pick-lock, key, crow, jack, bit, or other implement of house-breaking.**Held, that in order to constitute the offence, the possession need not be with intent to commit a felony.*

THOMAS BAILEY was tried at the Middlesex sessions on Monday, the 31st October, 1853, before Henry Witham, Esq., upon an indictment under the *Act for the better prevention of Offences*, 14 & 15 Vict. c. 19, s. 1. The indictment charged, that Thomas Bailey, on the 5th day of October, A.D., 1853, about the hour of twelve in the night of the same day, at the parish of St. James, Westminster, in the County of Middlesex, was found by night as aforesaid, then and there having in his possession, without lawful excuse, certain implements of housebreaking, to wit, one jemmy, and one chisel, against the form, &c. The jury found the prisoner guilty of possession, without lawful excuse, and they also found, that there was no evidence of an intent to commit a felony. It was contended on behalf of the prisoner by his counsel, in his address to the jury, that there was no evidence of an intent to commit a felony, and that such evidence was requisite; after verdict it was further contended that the omission of the words "with intent to commit a felony," rendered the indictment bad in arrest of judgment. Judgment was postponed, and the said Thomas Bailey was committed to the House of Correction at Clerkenwell, to abide the decision of the Court of Appeal.

The opinion of the Court of Appeal is requested as to whether the omission of the words "with intent to commit a felony," renders the indictment bad in arrest of judgment, and whether it was necessary to prove an intent to commit a felony.

No counsel was instructed for the prisoner.

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

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Huddleston, for the prosecution.—The 1st section of 14 & 15 Vict. c. 19, upon which this question turns, enacts, that (1) if any person shall be found by night armed with any dangerous or offensive weapon or instrument whatever, *with intent to break or enter into any dwelling-house, or other building whatsoever, and commit any felony therein*, or (2) if any person shall be found by night, having in his possession without lawful excuse (the proof of which excuse shall be on such person), any pick-lock, key, crow, jack, bit, or other implement of housebreaking, or (3) if any person shall be found by night having his face blackened, or otherwise disguised, *with intent to commit any felony*, or (4) if any person shall be found by night in any dwelling-house or other building whatsoever, *with intent to commit any felony therein*, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable at the discretion of the court, to be imprisoned with or without hard labour for any term not exceeding three years. That section therefore creates four offences; and as to three of them the intention to commit a felony is expressly made part of the offence; but the other, of which the prisoner has been convicted, has not that ingredient; and it is obvious that the unlawful possession of implements of housebreaking is sufficiently dangerous to society, although it may be unaccompanied with any immediate purpose of committing a felony. (He was stopped by the court.)

POLLOCK, C. B.—This is the clearest possible case.

Conviction affirmed.

COURT OF CRIMINAL APPEAL.

November 26, 1853.

REG. v. LUCKHURST. (a)

Admissibility of confession—Threat held out in the presence of a person likely to prosecute for the offence.

Upon the trial of an indictment for an unnatural crime with a mare, one of the witnesses, in the presence of T. the owner of the mare, threatened to give the prisoner in charge to the police if he did not tell what business he had in T.'s stable, where the mare was. At that moment the charge had not been made known to the prisoner, but it was immediately afterwards, and then he confessed.

Held, that this confession was inadmissible in evidence, having been made under the influence of a threat held out to him in the presence of one, who being the owner of the mare, was likely to prosecute for the offence.

THE following case was stated by Cresswell J.:—

The prisoner was tried before me, at the last Maidstone Assizes, on a charge of having committed an unnatural crime on a mare. The first witness for the prosecution was John Taylor, the material part of whose evidence was as follows:—I live at Canterbury; on the 2nd of June I had a stable at the George and Dragon, and kept a mare there. There was a gate in front of the stall in which she was. People could look through the bars of it, and could get over into the stall. I had locked it on the 2nd of June. In the evening I found a man in the stall. The prisoner was the man. It was then after eight o'clock. I asked him what business he had there? He said some one had locked him in. I said I had the key in my pocket. I asked what was the matter with the mare? He said he had not hurt it. I said your trowsers are undone. Then I let him out. Then I went and told Mr. Willard, the landlord of the stable. Willard went to the stable and then to Crow's with me. We there saw the prisoner. Willard asked him what business he had in the stable. I observed some hairs on the prisoner's trowsers, all round the front. I picked them off and showed them to him. The outer door of the stable was not locked.

Richard Willard.—I keep the George and Dragon. I went

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

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with Taylor on the 2nd June to the stable, observed the condition of the mare, very restless. I went with Taylor to Crow's, and saw the prisoner. I called him out and said I wished to speak to him. I said I wished to know what business he had in Taylor's stable, as it was my fault leaving the outside door open, and he must have gone through my premises to get to Taylor's. He said "You know." I said "I don't know, and have come on purpose to know, and will know before I leave, and if you don't tell me I will give you in charge to the police till you do tell me." He said again, "you know." I said, "I don't know, but according to what I could see of the mare, it is the best of my belief that you had connection with her." He said, "I had; for God's sake say nothing about it." He offered to treat me or give me anything to say nothing about it. Then I left him at Crow's bar. Taylor was close by at the time when I had this conversation with him. Cross-examined.—I called you a dirty beast, and left you directly. You and Taylor then went to the stable.

The prisoner was not defended by counsel, and no objection was made by him to the evidence, but the counsel for the prosecution called my attention to the nature of it before it was given: I thought it best to receive the evidence and reserve the question of its admissibility.

The prisoner was found guilty, and judgment of death recorded. I have now to request the opinion of this Court whether the evidence of Willard was admissible or not?

This case was entered on the paper for November 12, but was not argued by counsel. It was afterwards considered by Jervis, C. J., Pollock, C. B., Parke, B., Coleridge, J., Cresswell, J., Platt, B., and Williams, J.

PARKE, B. now delivered the judgment of the Court.—We who have considered the case are of opinion that the evidence of Willard was not admissible. He certainly used a threat when he said to the prisoner that he would give him in charge to the police if he did not tell. At the time of making that threat the precise nature of the charge had not been communicated to the prisoner; but before he made a confession he was told in the presence of Taylor that the charge was that he had had connection with the mare. That was the same as if Taylor had done what Willard did, and so the objection is got rid of, that the inducement was held out by one who had no authority in the matter, for Taylor being the owner of the mare, was a person likely to prosecute for the offence. It is just the same as if the inducement had been held out by Taylor himself, and that would have prevented the evidence from being received. The conviction therefore is wrong.

Conviction reversed.

COURT OF CRIMINAL APPEAL.

November 26, 1853.

REG. v. JANE SLEEMAN. (a)

*Admissibility of confession—Inducement—Who is a person in authority.**A maid-servant under a charge of setting fire to a farm building belonging to her master, was given into the temporary custody of a married daughter of her master, who did not live in the house, and had no control over her as a mistress. Whilst they were alone together, the daughter said to the prisoner, "I am sorry for you, you ought to have known better; tell the truth, whether you did it or no;" and upon the prisoner replying "I am innocent," added, "don't run your soul into more sin, but tell the truth." She then confessed.**Held that the confession was admissible, for that the words used did not amount to a threat or inducement, nor were they used by any person in authority.***T**HE following case was stated by Martin, B. :—

This case was tried before me at the last Summer Assizes for Exeter (1853), and the prisoner was convicted. The prisoner was the servant of John Sandercock, and was indicted for setting fire to a farm building belonging to her master on the 2nd of June, 1853. She was taken into custody by George Stee, a policeman, on the 15th of June. She was about to go away from him, but he prevented her, saying she was his prisoner upon the charge of this arson. She then desired to change her dress. He said she might do so, but that she must remain in custody, and he gave her into the charge of a Mrs. Allen. Mrs. Allen was a married daughter of her master's, but did not live in her father's house, and had no control over the prisoner by reason of any relation of master and servant. Mrs. Allen went with her into a lenny where her clothes were, but both Mrs. Allen and the prisoner considered that the latter was in custody.

The following is the evidence of Mrs. Allen, so far as is necessary to raise the question :—The prisoner was given into my charge by George Stee the policeman. I took her into the lenny to change her clothes. The first thing I said to her was: Jane, I am very sorry for you, you ought to have known better; tell me

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the truth, whether you did or no. She said, I am innocent. I said, don't run your soul into more sin, but tell the truth; she then began to cry, and sat down and said that she took a crop of furze from the blow-frames, and she only meant to burn the machine-house. She then went on to state how she set the place on fire, and made a full confession of her guilt. I postponed the judgment, as I desire the opinion of the Court of Criminal Appeal, whether the above confession was legally admissible in evidence, and if not legally admissible, I request that the Court may make an order for the discharge of the prisoner.

This case was set down in the paper for November 12, but was not argued by counsel. It was subsequently considered by Jervis, C. J., Pollock, C. B., Parke, B., Coleridge, J., Platt, B., and Williams, J.

PARKE, B. now delivered the judgment of the Court.—In this case we all think that there was really no threat or inducement at all; and secondly, that Mrs. Allen was not a person in such authority that an inducement or threat held out by her would render the confession inadmissible. The evidence, therefore, was properly received, and the conviction is right.

Conviction affirmed. (b)

(b) See *Reg. v. Baldry*, 5 Cox C. C. 523; *Reg. v. Hannah Moore*, ib. 555.

CENTRAL CRIMINAL COURT.

October 29, 1853.

OCTOBER SESSION.

(Before CRESSWELL, J., and WILLIAMS, J.)

REG. v. PARDENTON AND WOOD. (a)

3 & 4 Vict. c. 97, ss. 13, 14, and 15—*Railways—Negligence of engine drivers—Jurisdiction.*

An offence alleged to be committed under the 13th section of 3 & 4 Vict. c. 97, can only be tried at Quarter Sessions, and is not within the jurisdiction of the Central Criminal Court.

The neglect of the driver and stoker of a railway engine to keep a good look-out for signals, according to the rules and regulations of the railway company, the consequence of which neglect is, that a collision occurs, and the safety of passengers is endangered, is not an offence within the 15th section of the above act.

THE defendants were charged upon the following indictment, which was framed under the 3 & 4 Vict. c. 97, ss. 13 and 15. (b)

CENTRAL Criminal Court, } The jurors for our Lady the
to wit. } Queen upon their oath present,
that heretofore and after the making, passing, and coming into operation of a certain act of Parliament holden in the third and fourth years of the reign of Her present Majesty, Queen Victoria, intituled *An Act for Regulating Railways*, and at the time of the unlawful omissions and offences hereinafter in the several counts of this indictment mentioned, there was and still is a certain railway company called the Great Northern Railway Company, being the proprietors of a certain railway proceeding from the parish of St. Pancras, in the County of Middlesex, to Peterborough, in the County of Lincoln, and to other places. And the jurors aforesaid, upon their oath aforesaid, do further present that before and at the time of the said unlawful omissions and offence hereinafter next mentioned, R. P. and J. W. hereinafter respectively mentioned, had voluntarily entered into the service and employment of the said company, and were respectively become and were servants of the said company, that is to say, the said R. P. had become and was engine-driver, and the said J. W. had become

(a) Reported by B. C. ROBINSON, Esq., Barrister-at-Law.

(b) The indictment is given at length, as it may form a valuable precedent for future cases, where persons accused are committed by the magistrates to take their trial at quarter session.

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and was fireman in the service and employment of the said company, for hire and reward to them respectively in that behalf, and had voluntarily taken upon themselves the duties and responsibilities appertaining to the said respective services and employments. And the jurors aforesaid, upon their oath aforesaid, do further present that afterwards and whilst the said R. P. and J. W. were in the service and employment of the said railway company as aforesaid, to wit, on the thirty-first day of August, in the year of our Lord one thousand eight hundred and fifty-three, the said R. P. then being such engine-driver as aforesaid, and in the course of his employment as such engine-driver, had taken upon himself and was trusted with the direction and management of a certain locomotive steam engine, having divers, to wit, twenty carriages thereunto attached, containing therein divers passengers and persons, for the purpose of driving the said engine and carriages along the said railway of the said company, to wit, from St. Pancras aforesaid to Peterborough aforesaid; and the said J. W. then and there as such fireman and servant as aforesaid, and in the course of his employment as such fireman and servant had taken upon himself, and was then entrusted with the duty of aiding and assisting the said R. P. in driving the said engine and carriages as aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present that the said R. P. being such engine-driver as aforesaid, and having so taken upon himself and being entrusted with the direction and management of the said engine, for the purpose aforesaid, according to and in the course of his said service and employment, did thereupon, to wit, on the day and year aforesaid, proceed to drive, and did in fact, drive the said engine and the said carriages thereto attached, then and there containing the passengers aforesaid, along the said railway, to wit, from the parish aforesaid, towards Hornsey, in the county of Middlesex, in which said driving of the said engine and the said carriages, the said J. W. being such fireman and servant, as aforesaid, and having so taken upon himself and being entrusted with the duty of aiding and assisting the said R. P. as aforesaid, according to and in the course of his said service and employment, then and there during all the times in this count mentioned, aided and assisted the said R. P. And the jurors aforesaid, upon their oath aforesaid, do further present that thereupon it became and was the duty of the said R. P. to drive, and of the said J. W. to assist him in driving the said engine and carriages along the said railway, in a cautious, careful, and vigilant manner, and it became and was the duty of the said R. P. and J. W. during the said passage of the said engine and carriages along the said railway, cautiously to watch for and observe all signals and notifications of actual and impending danger to the said engine, carriages, and passengers, and immediately upon any such notification or signal of danger, to use their best endeavours to check and diminish the speed and progress of the said engine and carriages, and also immediately to cause notice of such danger to

be given to R. S., T. B., and T. M., then and there being guards in the employment and service of the said company, to the intent that the said R. S., T. B., and T. M., then and there being such guards as aforesaid, might then and there co-operate with the said R. P. and J. W., being such engine-drivers and firemen respectively, in diminishing the speed and progress of the said engine and carriages, and in stopping the same. And the jurors aforesaid, upon their oath aforesaid, do further present that afterwards and whilst the said engine, carriages, and passengers were so passing along the said railway towards Hornsey aforesaid, and were approaching a certain railway station on the said railway, called the Hornsey station, to wit, at Hornsey aforesaid, in the said county of Middlesex, and within the jurisdiction of the said Central Criminal Court; and whilst the said engine was so approaching the said station with great speed, force, and violence, the said railway became and was obstructed, to wit, by a certain carriage called a tender, at and near to the said station, in such manner that the said engine, proceeding as aforesaid, became and was in great and imminent peril of being propelled against the said obstruction, to the great endangerment of the lives and limbs of the said passengers passing along the said railway; whereupon notice of impending danger to the said engine, carriages, and passengers was signified to them the said R. P. and J. W., to the intent that the speed and progress of the said engine and carriages might be checked, slackened, and diminished; that is to say, by the exhibition to them of a certain red flag, then and there being the signal used in such cases, as the said R. P. and J. W. then and there well knew. And the jurors aforesaid, upon their oath aforesaid, do further present that the said R. P. and J. W., then and there being such engine-driver and fireman respectively, and servants to and in the employ of the said company as aforesaid, and being so charged with the duties and responsibilities as aforesaid, not regarding their duty in that behalf, then and there, to wit, on the day and year aforesaid, at Hornsey aforesaid, in the county of Middlesex, and within the jurisdiction of the said Central Criminal Court, unlawfully, negligently, and whilst the said danger was so impending as aforesaid, did altogether fail in their said duty in that behalf, and the said R. P. then and there unlawfully and negligently did altogether fail and omit to drive, and the said J. W. unlawfully and negligently failed and omitted to assist him in driving, the said engine and carriages along the said railway, in a cautious, careful, and vigilant manner. And the said R. P. and J. W. then and there, and during all the time last aforesaid, and during the passage of the said engine and carriages along the said railway as aforesaid, unlawfully and negligently did altogether fail and omit cautiously to watch for and observe any signals and notifications of danger to the said engine, carriages, and passengers, and did not and would not observe the said notice and signal so exhibited as aforesaid, and then and there and during all the time last aforesaid, did altogether fail and omit to use any endeavours

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whatever to check or diminish the speed and progress of the said engine and carriages, and did not nor would cause any notice of such impending danger to be given to the said R. S., T. B., and T. M., so being such guards as aforesaid, to the intent that the said R. S., T. B., and T. M., might co-operate with them the said R. P. and J. W., in stopping or diminishing the progress of the said engine and carriages, and on the contrary thereof the said R. P. and J. W., then and there unlawfully and negligently, and notwithstanding the said notification and signal of danger, did drive the said engine in so incautious, careless, and negligent a manner, and with such speed and violence, and without in any way regarding the said signal and notification of danger as aforesaid, and without in any proper manner checking and diminishing the said speed and progress of the said engine, that owing to and by reason of the unlawful and negligent omissions aforesaid, the said engine was then and there propelled, jammed, and forced with great violence against the said obstruction, whereby the passage of the said engine along the said railway was then and there greatly obstructed and impeded, and the lives and limbs of divers persons, being the passengers aforesaid, then and there passing along and being upon the said railway, to wit, Sir J. D., Bart., T. C., Esq., and H. I. were greatly injured and endangered, against the form of the statute in such case made, and against the peace of our said Lady the Queen, her crown and dignity.

Second Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that before and at the time of the unlawful omissions and offence hereinafter next mentioned, the said R. P. and J. W. had voluntarily entered into the service and employment of the said railway company, and had respectively become and were servants, that is to say, the said R. P. had become and was engine-driver, and the said J. W. had become and was fireman in the service and employ of the said company, for hire and reward to them respectively in that behalf, and had voluntarily taken upon themselves such service and employment, to be by them respectively performed in accordance with and subject to the bye-laws, rules and regulations of the said company. And the jurors aforesaid, upon their oath aforesaid, do further present, that afterwards and whilst the said R. P. and J. W. were so in the service and employment of the said railway company as aforesaid, to wit, on the thirty-first day of August, in the year of our Lord, one thousand eight hundred and fifty-three, the said R. P. then being such engine-driver as aforesaid, had taken upon himself the direction of and management of a certain locomotive steam-engine, having divers, to wit, twenty carriages thereunto attached, containing therein divers passengers and persons for the purpose of driving the said engine and carriages along a certain railway of the said company, called the Great Northern Railway, to wit, from St. Pancras aforesaid, to Peterborough aforesaid, and the said J. W. then and there as such fireman and servant as

aforesaid, and in the course of his employment as such fireman and servant, had taken upon himself and was then entrusted with the duty of aiding and assisting the said R. P. in driving the said engine and carriages as aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present that the said R. P. being such engine-driver as aforesaid, and having so taken upon himself and being entrusted with the direction and management of the said engine for the purposes aforesaid, did thereupon, to wit, on the day and year aforesaid, proceed to drive, and did in fact, drive the said engine and the said carriages thereto attached, then and there containing the passengers aforesaid, along the said railway, to wit, from St. Pancras aforesaid, towards Hornsey aforesaid, in which said driving of the said engine and the said carriages, the said J. W. being such fireman and servant as aforesaid, and having then and there taken upon himself and being entrusted with the duty of aiding and assisting the said R. P. as aforesaid, according to and in the course of his said service and employment, then and there and during all the times in this count mentioned, aided and assisted the said R. P. And the jurors aforesaid, upon their oath aforesaid, do further present that at the time of the commission of the offence and omissions hereinafter next mentioned, the existence of impending danger and obstruction to any engine and carriage proceeding upon the said railway, was according to the laws, rules, and regulations of the said railway company, to be notified to the engineman and fireman upon such engine, by certain signals as well moveable as fixed, used, and approved by the said company, that is to say as well by a certain wooden arm raised so as to form a horizontal position with a fixed post attached to the same, as by a moveable red flag to be exhibited to such engineman and fireman. And the jurors aforesaid, upon their oath aforesaid, do further present that, according to the laws, rules, and regulations of the said company, all engine-drivers and firemen driving and assisting in driving any locomotive steam-engine along the said railway, are, and at the time of the commission of the offence and omissions hereinafter mentioned were, required to keep a good look-out for the said fixed signals at the several railway-stations on the said railway, and also to keep a good look-out for all signals exhibited on the said railway, and also to give immediate attention to all such signals, and to obey such signals, even should such engine-driver think such signals wrong, except he should see danger in obeying such signals, and upon the exhibition of a red flag immediately to stop the progress of any engine under their management and direction, proceeding along such railway. And the jurors aforesaid, upon their oath aforesaid, do further present that afterwards and whilst the said engine, carriages, and passengers, were so passing along the said railway towards Hornsey aforesaid, and were approaching a certain railway station on the said railway, called the Hornsey station, to wit, at Hornsey aforesaid, in the said county of Middlesex, and within the jurisdiction of the said Central Criminal Court, with great speed, force,

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and violence, the said railway became and was obstructed, to wit, by a certain carriage called a tender, at and near to the said station, in such manner, that the said engine proceeding as aforesaid, became and was in great and imminent peril of being propelled against the said obstruction, to the great endangerment of the lives and limbs of the said passengers passing along the said railway; whereupon one of the moveable signals of danger was shown and exhibited to the said R. P. and the said J. W., and one of the said fixed signals of danger was also exhibited to him at the said railway station at Hornsey aforesaid, and notice of the said impending danger was, according to the rules and regulations of the said company, duly signified to them the said R. P. and J. W. by the signals aforesaid, to the intent that the said R. P. and J. W. might be forewarned of the said danger, and might stop the said engine, and prevent the same from being propelled against the said obstruction as aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said R. P. and J. W. then and there respectively being such engine-driver and fireman and servants of the said company as aforesaid; and then and there respectively being upon the said engine, and driving and assisting in driving the same, not regarding the rules and regulation of the said company, and the duty of them the said R. P. and J. W. in that behalf then and there, to wit, on the day and year aforesaid, at Hornsey aforesaid, in the county of Middlesex aforesaid, and within the jurisdiction of the said Central Criminal Court, whilst the said danger was so impending as aforesaid, and during all the time the said signals were so exhibited to them as aforesaid, unlawfully, negligently, and contrary to the rules and regulations of the said company, did altogether violate and disregard the said rules and regulations, and contrary thereto, unlawfully and negligently did fail and omit to keep a good look-out for the said fixed signal at the said railway station, and altogether omitted to regard or to pay any attention to the same, and during all the time last aforesaid, unlawfully, negligently, and contrary to the said rules and regulations, did altogether fail and omit to keep any look-out for either of the said signals, or any signals whatever exhibited on the said railway, and to obey or give any attention whatever to the said signals, although the said R. P. and J. W. well knew and saw, as the fact was that there was no danger in obeying such signal, but on the contrary thereof, and notwithstanding the exhibition of the said signals, unlawfully, negligently, and contrary to the said rules and regulations then and there contained, did continue to drive and cause to be driven and propelled, the said engine, with so much force and speed, and without stopping or in any way checking the same forthwith, as they could, should, and ought to have done, that owing to such their said acts and omissions, and by reason thereof, the said engine was then and there propelled, jammed, and forced with great violence against the said obstruction, whereby the said passage of the said engine along the said railway was then and

there greatly obstructed and impeded, and the lives and limbs of divers persons, being the passengers aforesaid, then and there passing along and being upon the said railway, to wit, Sir J. D., Bart., T. C., Esq., and H. J. were greatly injured and endangered, against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her Crown and dignity.

Third Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that at the time of the commission of the offence hereinafter next mentioned, the said R. P. was engine-driver, and the said J. W. fireman, and each of them respectively was a servant in the employment of the said railway company, called the Great Northern Railway Company; and that the said R. P. and J. W., being respectively such engine-driver and fireman, and servant as aforesaid, after the passing of the said act of Parliament in the first count of this indictment mentioned, to wit, on the day and year aforesaid, on a certain railway of the said company, called the Great Northern Railway, at Hornsey aforesaid, in the county of Middlesex aforesaid, and within the jurisdiction of the said Central Criminal Court, unlawfully and negligently did drive a certain railway engine, having attached thereto divers, to wit, twenty carriages, containing divers, to wit, five hundred persons, then and there passing along and being on the said railway, upon and against a certain carriage called a tender, then and there being on the said railway, whereby not only the passage of the said engine and carriages were then and there greatly obstructed and impeded, but the lives and limbs of divers of the said persons then and there passing along and being on the said railway, to wit, Sir J. D., Bart., T. C., Esq., and H. J. were greatly injured and endangered; against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her Crown and dignity.

Fourth Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that heretofore and at the time of the commission of the offence hereinafter next mentioned, and after the passing of the act of Parliament in the first count of this indictment mentioned, Sir J. D., Bart., T. C., Esq., and H. J., and divers other persons were being conveyed on a certain railway, called the Great Northern Railway; and the jurors aforesaid, upon their oath aforesaid, do further present that whilst the said persons were so being conveyed upon the said railway as aforesaid, to wit, on the day and year aforesaid, at Hornsey aforesaid, in the county of Middlesex aforesaid, the said R. P. unlawfully and wilfully did drive and force a certain locomotive steam-engine, then and there being attached to divers carriages containing the said persons so conveyed as aforesaid and using the said railway, against a certain carriage called a tender, then and there being on the said railway, with so much force and violence, and in such manner as then and there to endanger the safety of the said persons so then and there being conveyed in and upon the said railway in the said carriages, and whereby the safety of the said persons respectively then and there was

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endangered; and the jurors aforesaid, upon their oath aforesaid, do further present that the said J. W. then and there was present, aiding, assisting, conforing, and maintaining the said R. P. to do and commit the offence and misdemeanor aforesaid, against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her Crown, and dignity.

Montagu Chambers, Q.C. (Johnson with him), opened the case for the prosecution, by which it appeared that the defendants were the driver and stoker of a passenger train on the Great Northern Railway; that, by the rules and regulations of the company they were bound to keep a good look-out during the journey, and particularly when approaching stations, for any signals that might be made to them by the company's officers; that, on the day in question, they were conducting a passenger train, when, just as they approached the Hornsey station, a signal was made to them to stop, in consequence of an express train coming along the same line. But, instead of keeping a good look-out, their backs were turned to the signal man, and they were talking to each other. The consequence was that a collision took place, by which several passengers were injured and the lives of others endangered. The learned counsel said a question would arise, under the 14th section (c)

(c) The following sections of the act are the material ones:—

Sect. 13. And be it enacted, that it shall be lawful for any officer or agent of any railway company, or for any special constable duly appointed, and all such persons as they may call to their assistance, to seize and detain any engine-driver, guard, porter, or other servant in the employ of such company, who shall be found drunk while employed upon the railway, or commit any offence against any of the bye-laws, rules, or regulations of such company; or shall wilfully, maliciously, or negligently do, or omit to do, any act whereby the life or limb of any person passing along or being upon the railway belonging to such company, or the works thereof respectively, shall be or might be injured or endangered, or whereby the passage of any of the engines, carriages, or trains, shall be or might be obstructed or impeded, and to convey such engine-driver, guard, porter, or other servant so offending, or any person counselling, aiding, or assisting in such offence, with all convenient despatch, before some justice of the peace for the place within which such offence shall be committed, without any other warrant or authority than this act; and every such person so offending, and every person counselling, aiding, or assisting therein, as aforesaid, shall, when convicted before such justice as aforesaid (who is hereby authorized and required upon complaint to him, made upon oath, without information in writing, to take cognizance thereof, and to act summarily in the premises), in the discretion of such justice, be imprisoned, with or without hard labour, for any term not exceeding two calendar months, or in the like discretion of such justice shall, for every such offence forfeit to Her Majesty any sum not exceeding ten pounds; and in default of payment thereof shall be imprisoned, with or without hard labour, as aforesaid, for such period, not exceeding two calendar months, as such justice shall appoint, such commitment to be determined on payment of the amount of the penalty, and every such penalty shall be returned to the next ensuing Court of Quarter Sessions, in the usual manner.

Sect. 14. Provided always, and be it enacted, that (if upon the hearing of any such complaint he shall think fit) it shall be lawful for such justice instead of deciding upon the matter of complaint, summarily to commit the person or persons charged with such offence for trial for the same at Quarter Sessions for the county or place wherein such offence shall have been committed, and to order that any such person so committed shall be imprisoned and detained in any of Her Majesty's gaols or houses of correction in the said county or place in the meantime, or to take bail for his appearance with or without sureties, in his discretion; and every such person so offending and convicted before such Court of Quarter Sessions as aforesaid (which said court is hereby required to take cognizance of, and to hear and determine such complaint), shall be liable, in the discretion of such court, to be imprisoned, with or without hard labour, for any term not exceeding two years.

Sect. 15. And be it enacted, that from and after the passing of this act, every person who shall wilfully do or cause to be done anything in such manner as to obstruct any engine or carriage using any railway, or to endanger the safety of persons conveyed in or upon the same,

of the act of Parliament, as to the mode of prosecuting. It enacted that the magistrate before whom the investigation took place, in the first instance, might send the case to the quarter sessions, but it contained no directions as to the mode in which it was to be there dealt with, whether by bill before the grand jury, or otherwise.

CRESSWELL, J.—I do not think there is any difficulty on that point. The section enacts that, if the justice thinks fit, he may commit the offender for trial to the quarter sessions, and may order him to be detained, or may admit him to bail until the trial. The trial, then, can only be by indictment in the ordinary way. But is this a court of quarter sessions?

Straight, the deputy clerk of the arraigns, said that it was not. By the Central Criminal Court Act, the judges appeared to have the same power as they had upon the circuit, except, of course, that which was given by the commission of assize.

Chambers admitted that there was no act which placed the Central Criminal Court in the same position as a court of quarter sessions. But still the question would arise whether, although the offence was alleged to be against the form of the statute, the indictment did not disclose an offence at common law, where it charged acts endangering the lives of Her Majesty's subjects.

CRESSWELL, J.—Do you mean to argue that if a man were to gallop a horse furiously through the public streets without hurting any person, that he would be guilty of a misdemeanor because he might be convicted of manslaughter if any one were knocked down by him and killed?

Chambers, then contended that even if the three first counts could not be supported, the fourth count, which was framed upon the fifteenth section, might be sustained.

CRESSWELL, J.—Suppose no signal at all had been made, can you prove that he was driving at an improper speed?

Chambers admitted that he could not.

CRESSWELL, J.—Then the real fault was, the not seeing the signal: how can you make that a wilful act?

Chambers.—By turning away from the place where signals might be expected to be made, and by talking together, the defendants were wilfully neglecting their duty.

CRESSWELL, J.—Yes; but they were doing no act which caused the injury, nor could their neglect be said to be wilful neglect.

Chambers could not state that the evidence would do more than disclose a wilful omission of duty on the part of the defendants.

CRESSWELL, J.—Without hearing the evidence, I think this case is now ripe for decision. Whatever construction may be put upon the 13th and 14th sections of the act referred to as regards the first three counts, I have no difficulty in saying that these counts do not disclose any offence at common law; and, if the

or shall aid or assist therein, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court before which he shall have been convicted, to be imprisoned, with or without hard labour, for any term not exceeding two years.

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evidence would support the charge upon the statute, it is clearly not triable here. It should have been prosecuted at the Quarter Sessions. It is, no doubt, an important question under the 13th section, whether the negligent omission to see a signal, or rather the negligent omission to keep a good look-out, whether any mischief occurs or not, is cognizable by a Criminal Court. According to the strict letter of the statute, if at any point between London and York the driver is not constantly on the watch, although the line is apparently clear at the time, and no accident happens, he would be punishable. As to whether or not, however, this is the right construction, I offer no opinion. As to the fourth count, I think there is no pretence for saying that the omission to keep a good look-out is an offence within the 15th section. It is not doing, or causing to be done, any act producing the consequences therein mentioned. Moreover, it appears to me that that section is more particularly directed against the wilful and wanton acts of strangers, by which the lives of the public may be endangered.

WILLIAMS, J.—I entirely agree with the opinion expressed by my learned brother upon all the points to which he has referred. It is impossible to conceive that this omission was a wilful omission, because, in all human probability, it would involve the loss of life to the very parties who were guilty of it. The 15th section, I think, clearly applies to the acts of persons, unconnected with the company at the time, wantonly obstructing engines by putting stones or other things upon the line, and thus causing wilful damage to the train. This appears to be so from the circumstance that the punishment for misconduct on the part of those in the immediate service of the company had been previously provided for.

The defendants were acquitted.

*Montagu Chambers, Q. C., and Johnson, for the prisoner.
Wilkins, Serjeant, and Parry, for the defendants.*

COURT OF CRIMINAL APPEAL.

January 21, 1854.

(Before JERVIS, C. J., WIGHTMAN, J., CRESSWELL, J.,
PLATT, B., and WILLIAMS, J.)

REG. v. GREENHALGH AND ANOTHER. (a)

*False pretences—Obtaining valuable security—Order for payment of money—Stat. 7 & 8 Geo. 4, c. 29, ss. 5, 53.**An order by the president of a burial society upon the treasurer for the payment of a sum of money to bearer on account of the society, is a valuable security within the meaning of stat. 7 & 8 Geo. 4, c. 29, ss. 5 and 53; and a member who obtained such an order by false pretences was held properly convicted of that offence, though the rules had neither been certified or enrolled.*

THE following case was reserved by the Recorder of Bolton:—
At the General Quarter Sessions for the borough of Bolton, holden on the 19th of December, 1853, David Greenhalgh and Edward Clapham were tried before me on an indictment charging that they, by false pretences, did unlawfully obtain from one Benjamin Beswick an order upon William Ashton Entwistle for the payment of 2*l.* 10*s.*, and also did unlawfully obtain from one Ellen Entwistle the sum of 2*l.* 10*s.*, the moneys of the said William Ashton Entwistle, with intent to defraud.

There were two other counts for obtaining by false pretences from Ellen Entwistle the sum of 2*l.* 10*s.*, the moneys of William Ashton Entwistle, with intent to defraud.

It appeared on the trial that there is a burial society in Bolton called the Bolton Union Burial Society, the rules of which have neither been certified nor enrolled; that the prisoner Greenhalgh was the secretary, and the prisoner Clapham collector of such society, both being members of the same and interested in its funds; that Benjamin Beswick was the president, and William Ashton Entwistle the treasurer of the society; that a weekly subscription of one halfpenny for twenty weeks would entitle the representatives of a deceased member to the sum of 2*l.* 10*s.*; that in case of the death of any member of the society, it was the duty of the two prisoners, as secretary and collector, to view the body together, to report the death to the president, and to apply to him for an order upon the treasurer for the amount to which the representatives of

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

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such deceased member were entitled, and to receive the same upon such order for the benefit of such representatives; that the treasurer would pay such orders out of the moneys of the society in his hands, but the treasurer is responsible to the society for all the money he has of theirs in his hands; that on the 1st of September the two prisoners came together to Benjamin Beswick, the president of the said society. He was at his work in a cellar below, and Greenhalgh called out, "Ben, there's another death, thou must come up and give an order." He came up, and found the two prisoners in the house, and said "Who's dead?" Greenhalgh replied, Robert Lord's child. Beswick asked the name of the child. Greenhalgh said, Robert Lord. He asked them whether they had seen the corpse; and they both said the child was dead. He then asked where the parties lived; Clapham said, in Green-street. That Beswick, believing their statements (which, in fact, were wholly and entirely false, no member of the name of Lord being dead at that time), gave and signed the order he was so asked for, and which was as follows, that is to say:—

"Bolton United Burial Society, No. 23,
Bolton, Sept. 1st., 1853.

"Mr. W. A. Entwistle, treasurer,—Please to pay the bearer (Greenhalgh) 2*l.* 10*s.*, and charge the same to the above society: Robert Lord.

"BENJAMIN BESWICK, President."

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That Greenhalgh took the said order; and the prisoners went away together; and afterwards, on the same day, went together to Entwistle's, the treasurer's, and saw Ellen Entwistle, his daughter; and Greenhalgh asked if her father was in, and she said No. He then said there is a death, and we want 2*l.* 10*s.*, and gave her the said order so obtained from the president. She told them they must wait till her father came in. They said they could not wait; and Clapham said that David (that is Greenhalgh) was going off by the train. She at last gave them 2*l.* 10*s.* on account of her father as such treasurer, and she did so from what they said, and on their giving her the said order, she gave the money to Greenhalgh, and she saw Greenhalgh afterwards give twenty shillings of that money to Clapham.

The learned counsel for the prisoners objected that these facts did not bring the case within the statute. I declined to stop it, and left it to the jury, who found both the prisoners guilty. I sentenced them to be severally imprisoned for eighteen months with hard labour. The question for the opinion of the court is, whether the prisoners, on the above-stated facts, were properly convicted or not?

No counsel appeared for the prisoner.

Cross, for the prosecution.—None of the objections which were taken to this conviction can be sustained. It was contended that

the case did not come within the statute, because the prisoner, as a member of the burial club, was part owner of the money (b); and also, that as the proof depended upon the rules of the society, and those rules had not been certified or enrolled, the case could not be established.

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JERVIS, C. J.—We think there is nothing in those objections.

Cross.—The only remaining one that the case in any way discloses is, that the order mentioned in the first count was not a valuable security within the 53rd section of stat. 7 & 8 Geo. 4, c. 29; but it is certainly an order for the payment of money; and the 5th section shows that that is included in the expression “valuable security.”

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JERVIS, C. J.—On the first count this conviction is clearly right. It alleges that the prisoners obtained by false pretences an order for the payment of money. They did obtain an order for the payment of money; and the pretences by which they obtained it were false. The only question, therefore, is, whether the order was a valuable security within the 53rd section of the 7 & 8 Geo. 4, c. 29, which says, “that if any person shall by any false pretence obtain from any other person any chattel, money, or valuable security, with intent to cheat or defraud any person of the same, every such offender shall be guilty of, &c.” Now, the 5th section of the same statute gives the rule of interpretation, which is, that “each of the several documents hereinbefore enumerated shall throughout this act be deemed for every purpose to be included under and denoted by the words ‘valuable security.’” One of those documents is “order or other security whatsoever for money or for the payment of money.” The case, therefore, is quite clear.

WIGHTMAN, J., CRESSWELL, J., PLATT, B., and WILLIAMS, J. concurred.

Conviction affirmed. (c)

(b) See *R. v. Bramley* (R. & R. 478), which was the case of the member of a benefit society stealing the property of the society out of the hands of a bailee.

(c) See *R. v. Murphy* (4 Cox Crim. Cas. 100), a case of embezzlement by the secretary of a friendly society; and *R. v. Woolley* (ib. 251, 255); *R. v. Woolley* (ib. 193); 1 Den. C. C. 559. In *Reg. v. Boulton* (1 Den. C. C. 508; 3 Cox C. C. 576), a railway ticket was held to be a chattel of value within sect. 53 of 7 & 8 Geo. 4, c. 29: see also *R. v. Arthur Dent*, 1 Cox C. C. 15; *R. v. Rouse*, 4 Cox C. C. 7; and *R. v. Turberville*, ib. 13.

COURT OF CRIMINAL APPEAL.

November 26, 1853.

(Before LORD CAMPBELL, C. J., PARKE, B., COLERIDGE, J.,
MAULE, J., PLATT, B., WILLIAMS, J., TALFOURD, J., and
CROMPTON, J.)

REG. v. SANS GARRETT. (a)

False pretences—Obtaining money—Intent to obtain.

The defendant had obtained from a banking firm in New York, a circular letter of credit for 210l., authorizing him to receive that sum, or any portion of it, from certain named correspondents in foreign countries, and then to draw for that amount upon the Union Bank in London, in favour of the persons from whom he had received it. He went to St. Petersburg, and having fraudulently altered the sum mentioned in the letter from 210l. to 5,210l., he presented it in its altered form to W. & Co. of that city, one of the firms named in the letter, and obtained from them 1,200l. He drew a bill for that amount on the Union Bank in favour of W. & Co. in London, the correspondents of W. & Co. in St. Petersburg. The bill was sent by the latter firm to London, to W. & Co. there, who duly presented it at the Union Bank, but payment was refused.

On an indictment charging the defendant with an attempt to obtain the sum of 1,200l. from the Union Bank by false pretences, it was held, that he could not be convicted. The presentment of the bill by W. & Co. of London could not be taken to be a presentment by the defendant, with intent to obtain money, since, had the money been obtained, it would have been obtained to the use and benefit of W. & Co., and not of the defendant.

THE following case was stated by Parke, B.:—

The prisoner was tried before me, at the July sessions, at the Old Bailey, for a misdemeanor. The seventh count of the indictment stated in substance, that the Union Bank, in London, were correspondents of Duncan, Sherman & Co., bankers, at New York, that Duncan & Co. were accustomed to give to persons that might apply to them, authority to demand from the Union Bank sums of money on account of, and on behalf of Duncan & Co.; that the Union Bank were accustomed to pay persons so authorized; that the prisoner demanded payment on account of, and on behalf of Duncan & Co., from the Union Bank, of the sum of 1,200l., and falsely pretended to the Union Bank that he was duly autho-

(a) Reported by B. C. ROBINSON, Esq., Barrister-at-Law.

rized by Duncan & Co. to demand, on their account and on their behalf, payment of the 1,200*l.* from the Union Bank, with intent, unlawfully, to obtain from the Union Bank a large sum of money, to wit, 1,200*l.*, whereas, in fact, he was not so authorized.

On the trial, it appeared that Messrs. Duncan, Sherman & Co., of New York, the correspondents of the Union Bank, in London, were in the habit of issuing circular letters of credit for certain sums, with a list of correspondents in different parts of the world, authorizing the persons to whom letters of credit were given, to draw in favour of one of those correspondents, for such part as he might require of the stipulated sums for which letters of credit were given on the Union Bank; and the correspondent upon giving cash upon such draft, was to indorse the amount on the circular, and when the whole was advanced, the last person making an advance retained the circular. The circular letters of credit were each numbered with distinctive numbers. The prisoner having procured such a circular from Duncan, Sherman & Co., at New York, for 210*l.*, No. 41, came to England, and there drew drafts in favour of the named correspondents there, to the amount, in different sums, of less than 210*l.*, and consequently retained the circular letter of credit, those sums being indorsed on it. He then went to St. Petersburg, and there exhibited the letter of credit to Wilson & Co. of that place, one of the firms mentioned in the list of correspondents, it having then been altered by him by the addition of the figure 5 to 210*l.*, and converted into a letter of credit for 5,210*l.*, No. 41. He obtained from that house several sums, and, finally, a sum of 1,200*l.*, and another of 2,500*l.* on drafts for those amounts on the Union Bank, drawn by the prisoner in favour of their London firm, all of which were indorsed on the back of the letter of credit. Wilson & Co., on receiving those drafts, forwarded them to their house in London, and they duly presented the draft for 1,200*l.* on the Union Bank, and required payment of it. It becomes unnecessary to state the circumstances as to any other draft, the proof of one case being sufficient to raise the point made for the defendant. The Union Bank having been advised of the draft No. 41, by Sherman & Co., as a draft for 210*l.* only, and so discovering the fraud, refused to pay the 1,200*l.*; and the defendant, being afterwards found in England, was taken into custody; and then the indictment in question was preferred against him.

The prisoner's counsel contended, first, that the prisoner had committed no offence in London. Secondly, that he had not committed the offence charged in the indictment. I thought a person, though personally abroad, might commit a crime in England, and be afterwards punished here, as, for instance, if he, by a third party, sent poisoned food to one in England, meaning to kill him, he would be guilty of murder, if death ensued, although he could not be amenable to justice till he was personally within the jurisdiction; and I thought it was a question for the jury, whether, although the prisoner's immediate object was to cheat Wilson

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and Co., of St. Petersburg, by means of the forged letter of credit, he did not also mean that they, or their correspondents, or the indorsers from them, should present this draft which was unauthorized by the true letter of credit, and obtain payment of it from the Union Bank, in London, as a true one; and I left the question to the jury, whether he did so intend, and the jury found that he did. The prisoner's counsel also contended, that, if he did so mean, and could be considered as making Wilson & Co., of London, his innocent agents to present the unauthorized cheque, he did not mean to obtain the amount of the cheque from the Union Bank in the sense of that word in the indictment, which, it was contended, meant an obtaining for himself, but that he only meant to enable Wilson and Co. to obtain it for themselves. *The King v. Wavell* (1 Moo. C. C. 224), was cited. I thought it right not to pass sentence on the prisoner, but to respite judgment until the opinion of the judges could be taken upon both these points. I accordingly request their opinion.

Byles, Serjt. (*Robinson* with him) for the defendant.—First, did the defendant intend to defraud the Union Bank at all? Secondly, inasmuch as when the bill was presented by Wilson & Co., he was not in England, did he commit any offence in this country? And, thirdly, did he intend to obtain any chattel, money, or valuable security, within the 7 & 8 Geo. 4, c. 29, s. 53.

LORD CAMPBELL, C. J.—The indictment here is for an attempt to obtain by false pretences; but I presume we may treat the case as if it was an ordinary one of false pretences, and discuss whether, if Wilson & Co. had actually obtained the money from the Union Bank, the obtaining could be said to be by the prisoner under the statute.

Byles.—Just so. Nothing turns here upon the difference between attempting to obtain, and actually obtaining. The 5th section of the statute defines what is meant by a valuable security. If this money had been paid at the Union Bank, could it be said that the defendant had obtained either chattel, money, or valuable security? The money would have been received by Wilson & Co. here; and they would not have been bound to account to the defendant for any portion of it. All he could by possibility obtain, even if that were otherwise, would be credit in account. Before the money was obtained here he owed the amount to Wilson & Co. of St. Petersburg. After it was obtained he owed it to Wilson & Co. here.

PLATT, B.—As you put it he merely overdrawed his account in Russia.

Byles.—That is so. The money would have been obtained here by and for another person. *Wavell's case* (1 Moo. C. C. 224), is in point; and it was there held, that obtaining credit with a banker by false pretences, and thus procuring him to pay drafts to third persons, was not an obtaining of a chattel, money, or valuable security within the statute. There it was said, that the person

who presented the cheque, and obtained the money, was the agent of the defendant who had procured the credit by the deposit of a forged bill. But the court held that it was not so. By an act of his he had enabled a certain person to obtain money, but he himself had not obtained it. The utmost that could be said was, that the bank paid certain debts for which he was liable.

LORD CAMPBELL.—It is clear that the money was never intended to reach his hands.

Byles.—Lord Tenterden, in *Wavell's case*, says: "the defendant only obtains credit in account, some one else receives the money." It is impossible to distinguish that case from the present one. Suppose a man utters a 5*l.* note which he knows to be forged, he is not only guilty of uttering but also of obtaining money by false pretences if money is given to him for the note. Suppose that afterwards the note passes through fifty different hands, could he be said to utter it in every instance; or could it be maintained that when he originally uttered it it was with the intent of getting successive sums of money upon it? He must be supposed to have contemplated that the note would circulate from hand to hand, and that money would be obtained upon it by the various holders, but could it be contended that every time they obtained money it was an obtaining by him? If so, he would be committing a fresh crime every time the note changed hands. He might have been convicted of the original offence and have suffered transportation; but if the note was in circulation on his return he might be tried and convicted again, by reason of this doctrine of relation back to the original fraud. In the present case, when the defendant received the money in St. Petersburg he had entirely effected his purpose; he had no ulterior intent with regard to either the letter or the bill. The intent necessary to be proved here is an actual intent and not a constructive one. It would be very superfluous to enact that a man should not commit a crime to benefit another person, yet this is the construction contended for on the other side. It is as if the words of the statute were "If any one, for himself, or for any other person, or by himself or by any other person, should pretend and obtain for his own or that other person's benefit."

LORD CAMPBELL.—The only interest the prisoner would seem to have after he had obtained the money in St. Petersburg would be that the bill should not be presented in London.

Byles.—Suppose, instead of this bill being presented at the Union Bank immediately, it had been indorsed over several times—would every fresh indorsement by an innocent holder be a distinct crime committed by the defendant? No principle of law is more clear than that penal statutes must be construed strictly. *R. v. Lara* (6 T. R. 565), was cited.

Huddleston (*Bodkin* with him for the prosecution) was then called upon by the court to support the verdict. If the cheque had been paid in London the defendant would have obtained money within the meaning of the statute. To obtain, means, to

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get from an individual. It is not essential that the person who makes the pretence should get the money to himself.

LORD CAMPBELL.—Do you mean to say that to obtain a thing is simply to deprive another of it?

Huddleston.—Yes. I contend that such is the meaning of the statute. To deprive under such circumstances that the person deprived would be cheated. It is not merely the word "obtain" that is used. It is "obtain from." Suppose that A., for the purpose of ruining B., gets him, by fraud, to pay a large sum of money to C., A. may then be said to have obtained the money from C.

MAULE, J.—Suppose then, A. induces B. to spend his money in extravagance, or in gaming, so that B. is ruined, can A. be said to have obtained B.'s money? Is not the word "obtain" used in the sense of "to acquire?"

Huddleston.—In larceny it is not necessary that the prisoner should have obtained the thing stolen to his own use.

COLERIDGE, J.—The section seems framed with a view to distinguish it from a case of larceny. The word "obtain" seems expressly narrowed to the meaning contended for on behalf of the defendant.

Huddleston.—In *R. v. Jones* (1 Den. C. C. 188), the prisoner obtained a letter from the post-office, not with the view of using the letter, but for the purpose of destroying it, and thereby preventing its contents from reaching the person to whom it was addressed, whereby the prisoner's character would have been injured. She burnt the letter immediately on obtaining it, and yet this was held to be larceny.

LORD CAMPBELL.—Then the letter itself was in the possession of the prisoner, and by that possession the end she had in view was accomplished.

Huddleston.—The question here is, whether there was not such an obtaining, if not by the individual himself, at least, to his use, so that the object he had in view was carried out? The case put of the forged note is distinguishable, because the jury have found that the defendant did intend that the bill should be presented in London.

LORD CAMPBELL.—That means no more than that he foresaw it would be done.

Huddleston.—There is something more than mere foresight, because the draft is actually made in favour of the persons who present it, and the defendant directly nominates and authorizes them to present it. It is precisely as if he had sent a person to receive the money. The statute cannot mean that there must be an actual reduction into the possession of the person making the pretence. Otherwise a clerk sent for the express purpose of receiving the money, and so receiving it would not fix the principal with the receipt.

LORD CAMPBELL.—But there the money would be held by the clerk for the benefit of the master. Here the principal never

intended to obtain for himself or to get the least benefit by the obtaining of others.

Huddleston.—*Wavell's case* is distinguishable inasmuch as the decision there was that by the false pretence the defendant did not obtain any specific sum.

MAULE, J.—The decision seems to have been that the defendant did not obtain any chattel, money, or valuable security. All he obtained was credit in account, which was declared not to be within the statute.

Huddleston.—It is a universal principle of law that a man must be taken to contemplate the consequences of his own acts. The prisoner must have meant Wilson & Co. here to present the draft, and he therefore made them his agents for that purpose. If the Union Bank had paid the money they might have sued the defendant for money paid to his use. If, when the money was obtained, it was to have been handed over to the defendant, it would clearly have been obtained for his benefit. The only difference is that they pay him before presentation instead of afterwards.

LORD CAMPBELL, C. J.—I am of opinion that this conviction cannot be sustained. The question is, whether, supposing the Union Bank had honoured the cheque, the prisoner could have been indicted under the act of Parliament, for obtaining money by false pretences? I am clearly of opinion that he could not. I do not ground my judgment on the circumstance of the offence having been committed beyond the jurisdiction of the Criminal Courts of this country; for a person may by the employment as well of a conscious as of an unconscious agent, render himself amenable to the law of England when he comes within the jurisdiction of our courts. But I am clearly of opinion that this would not have been an obtaining money by false pretences within the meaning of the statute, had it been actually obtained. I think the act means, that the money should be obtained according to the wish, or to gain some object of the party who makes the false pretence. Here the obtaining had not the effect of accomplishing any object the prisoner had in view. No advantage could arise to him by the cheque being honoured. He had gained his end when he was in St. Petersburg. It was a matter of perfect indifference to him whether Wilson & Co. did or did not obtain payment from the Union Bank. It would, in truth, have been much more for his benefit had the draft been burnt or lost on its passage from St. Petersburg to London. As has been observed by my brother Coleridge, the object of the statute was, that in cases where there were nice distinctions between larceny and fraud, the party should not go unpunished. And it was probably with a view to the case of larceny, that this enactment has been passed by the Legislature. With regard to larceny, we must always see that in the act alleged as constituting the offence, the person committing it had some advantage, not necessarily a pecuniary advantage, but the gratification of some wish, otherwise it would not be larceny. We are

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pressed in argument by the finding of the jury, that the defendant meant Wilson & Co. to present the draft. That merely amounts to this, that the prisoner foresaw, and anticipated, that the draft would be presented for payment at the Union Bank, not that he wished it. In one sense, indeed, he may be said to have meant it, for a man is said to intend what is the natural consequence of what he does, but that is a subtlety of law that cannot be made available to show that it was the real wish of the prisoner that the draft should be presented. To allow it to have that effect here, would be to confound two entirely different classes of offences. There has, no doubt, been a gross fraud, but there is not an obtaining of money by false pretences within the meaning of the act of Parliament.

PARKE, B.—The real question at issue has been stated by my lord to be, whether, if Wilson & Co. had obtained the money, the prisoner could have been convicted of obtaining money by false pretences? The word "obtain" in this statute must mean not the mere defrauding or depriving another of his property, but the getting some benefit for himself. In *Re Wavell* there was no false pretence made use of with the view of obtaining any specific sum. The only object of the prisoner there was to obtain credit in account with the bank. It was decided, I think, by the judges on that ground, and that no chattel, money, or valuable security was obtained by the pretence. Had this been the case of a debtor drawing a cheque upon a bank, and giving it to a creditor in discharge of his account, and then going to the bank, and by means of a false pretence inducing the bank to honour the cheque when presented by the creditor, the debtor would, I think, be within the act, and would obtain the money by false pretences. Supposing the law to be as I have stated it, I have felt a difficulty in saying that the prisoner has not indirectly obtained the benefit by the payment to Wilson & Co. But I do not feel so strong an opinion on the matter as to say that I doubt the correctness of what Lord Campbell has said, that there would have been no advantage to the prisoner in the payment to Wilson & Co. Supposing the money had been paid, and a prosecution had been instituted against the prisoner for obtaining it by false pretences, I am inclined to think it must have failed, for I am not satisfied he would have committed any indictable offence.

COLERIDGE, J.—I agree in opinion with Lord Campbell. The point is, whether, if the money had been obtained, the case would have come within the 53rd section of the act of Parliament? The prisoner did not actually obtain the money, nor did he constructively obtain it by means of an agent. In order that a person should be the agent of another in obtaining money, he must obtain it by the desire or for the benefit, or according to the intent of the supposed principal. The prisoner could not have intended that Wilson & Co. should obtain the money, for he knew that the Union Bank must discover the fraud, and their paying it, therefore, was out of the question. But if they had done so, it does

not appear to me that Wilson & Co. would have received it for his benefit, or according to his desire. The expression that he meant them to present the cheque merely means that his opinion was that they would do so.

MAULE, J.—It is clear to me that the prisoner is not guilty. All that he did was done at St. Petersburg, and no part of it in London. What was done in London by Wilson & Co. in presenting the cheque (an act which the prisoner manifestly would have desired not to be done) is sought to be charged against him as an act of his own. The jury, in answer to a somewhat leading question, whether the prisoner did not mean that Wilson & Co., or their correspondents or indorsees, should present the cheque, found that he did mean it; and it is said that this act of Wilson & Co., in presenting the cheque, is brought home to the prisoner by this finding of the jury. But the jury never intended to say that the prisoner requested or ordered Wilson & Co. to present the cheque, or made them his agents for the purpose of so doing. It is also put, that in cases of forgery, it has been held, that a man must be taken to intend that to take place which is the natural consequence of his act. That principle applies if you mean to impute to an act a character of criminality in consequence of the intent. Thus, if a man utters a forged Bank of England note, it is always held, that if the bank would have been defrauded if they had paid the note, the party who utters it must be responsible for the act, as done with intent to defraud the bank. But the question there depends upon the mode in which the bank parts with their money. It does not depend upon who gets the money. If the bank is cheated out of their money by means of the forged note, they are defrauded as the utterer of the note intended they should be. But in determining whether the money here, if obtained, would have been obtained by the prisoner, it is necessary to consider the person by whom, and the manner in which it must have been received. It is found that it would have been obtained by some persons whom the prisoner foresaw would, in all probability, present the cheque, but who did not present it for him, or mean to apply the money to his purposes but to their own. It is clear to me, therefore, that there was no obtaining by him. It might be truly charged against the prisoner that he intended to defraud the London bank, to whom he might foresee that the cheque would be presented, but that does not constitute an obtaining the money by him any more than when a party has put a forged note into circulation he can be said to have obtained the money from the Bank of England, by whom it is paid, twelve months afterwards. What took place in London the prisoner did not order. He might foresee it as I have said, and might regret being obliged to foresee it; but I do not think him criminally responsible for it.

PLATT, B.—I also think the conviction cannot be sustained. Suppose that the whole transaction had occurred in England. That the defendant had obtained a letter of credit authorizing him

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to receive money at York, and then to draw upon a bank in London. That he altered the sum mentioned in the letter to a larger amount, received that amount in York, and drew upon the house in London. Surely when he got the money in York, there would be an end to all intent on his part with reference to the draft and its payment. The fraud would be committed at York, and would be there complete, and no one would have thought in such a case of charging the defendant with a fraud in London. So here the fraud was complete in St. Petersburg; but because the defendant cannot be convicted here, under the circumstances, for what was done in another country, we are asked to strain the law for the purpose of bringing him within its provisions. It seems to me impossible to say that those who presented the cheque for their own use and benefit were the agents of the prisoner in so doing.

WILLIAMS, J., TALFOURD, J., and CROMPTON, J., concurred.

Conviction quashed.

Bodkin and Huddleston, for the prosecution.

Byles, Serjt., and Robinson, for the prisoner.

COURT OF CRIMINAL APPEAL.

February 4, 1854.

(Before LORD CAMPBELL, C. J., PARKE, B., ALDERSON, B.,
COLERIDGE, J., MAULE, J., WIGHTMAN, J., CRESSWELL, J.,
PLATT, B., WILLIAMS, J., MARTIN, B., and CROMPTON, J.)

REG. v. BEAUMONT. (a)

Embezzlement—Master and servant—On whose account money received.

A contract had been entered into between W. and the Great Northern Railway Company, by which W. was to provide horses and carmen (the company providing carts) for the conveyance of the company's coals to their several customers. By the contract, W. stipulated that the carmen should, in all things connected with the carrying and delivery of the coals and the receipt and payment of moneys, obey the orders and commands of the company's coal manager, and should be subject to the same rules and regulations as the servants of the company; and, in case of disobedience of orders, should be immediately discharged. It was also provided that W. or the said carmen should, day by day, pay and account for, to the company's coal manager, all moneys, cheques, &c., they should receive from the customers of the company.

The defendant, being one of the carmen so engaged by W. and employed by the company, received from a customer the price of a load of coals he had delivered, and, instead of paying it over to the coal manager, he converted it to his own use.

Held, on an indictment charging him with embezzling certain moneys of W. his master, that he could not be convicted, since the money was received not for and on account of W., but for and on account of the railway company.

THE following case was reserved from the Central Criminal Court by the learned Recorder of London:—

At the General Session of Oyer and Terminer and General Gaol Delivery, holden for the jurisdiction of the Central Criminal Court on the 28th day of November, 1853, Edward Beaumont was tried and convicted before me upon an indictment for embezzlement, whereby it was charged in the usual manner, that he, being servant to Edward Wiggins, by virtue of his employment as such servant, received the sum of 5*l.* 10*s.* on account of his said master, and feloniously embezzled and stole that sum of money, and alleging that money to be the money of the prosecutor. Edward Wiggins, the

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prosecutor, had become a contractor with the Great Northern Railway Company for finding and providing them with necessary horses and carmen for the purpose of drawing, conveying, and delivering to the customers of the company the coals of the company in their own waggons, and had, moreover, contracted with the said company that he or his carmen should, day by day, duly account for and deliver to the said company's coal manager all moneys received from such customers in payment for coals so delivered. The delivery notes, as well as receipted invoices of the coals, were handed to the carmen of Wiggins, and the former were taken to his office to be entered in his books, but the invoices which were already receipted by the company were to be left with the customer on payment of the amount. The prisoner was the servant of Edward Wiggins, and was employed by him as his carman in the delivery of coal, pursuant to the said contract; and it was his duty to pay over direct to the clerks of the company any money he might receive for any such coals. It did not appear that such moneys so received by him and paid over to the company ever formed items of account between Edward Wiggins and the company. On the day mentioned in the indictment, the prisoner had, as the servant of Mr. Wiggins, delivered coals of the company to one of their customers. He also brought the delivery order to Wiggins' office, which was entered in his books, and received in payment the price of the coals, viz., the sum of 5*l.* 10*s.*, mentioned in the indictment, and left the receipted invoice with the customer. This sum he never handed over or accounted for to the company or their clerks, but converted the same to his own use, thereby rendering his master liable to pay that amount to the company under the said contract. This was the embezzlement upon which the prosecutor relied. It was contended for the prisoner, first, that the money had not been received on account of the prosecutor, Mr. Wiggins, and that, under such circumstances, the crime of embezzlement, within the meaning of the indictment and 7 & 8 Geo. 4, c. 29, had not been completed; secondly, that the ownerships of the money stated in the indictment was not proved as laid. As to the first point, I directed the jury that, as the prisoner was the servant of Mr. Wiggins, and received the money in the course of his employment as such servant, they might, under the above circumstances, find that he received it on account of his master in the sense used in and required to be proved by the indictment. On the second point, I directed the jury that, even if it were necessary to prove the money obtained to be the property of the prosecutor (of which I had some doubt), yet, if they found that it was received by the prisoner on the prosecutor's account, it would be the property of the master in the sense of the allegation in the indictment. Having doubts as to the propriety of my ruling on both the above points, I consented to reserve them for the consideration of the justices of either bench and barons of the Exchequer in the form of a case under the 11 & 12 Vict. c. 78; and the foregoing is the case upon which their decision is requested. Judgment has been respited upon the prisoner, and he remained

in gaol in default of sureties to receive judgment when called upon. Counsel are to be at liberty to refer to the terms of the contract itself, which, for that purpose, is to be considered part of the case.

J. STUART WORTLEY,

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The following is so much of the contract as is deemed material to the argument:—

“ Now, this indenture witnesseth that, in pursuance of the said agreement, and in consideration of the covenants hereinafter contained on the part of the said company to be observed and performed, the said Edward Wiggins doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said company, their successors and assigns, in manner following, that is to say, that the said company, finding and providing sufficient and suitable waggons or vans, carts, and sacks, in good order and condition, he, the said E. Wiggins, his executors, administrators, and assigns, shall and will, on the first day of January now next ensuing the date hereof, and from time to time, and at all times thereafter for the space of twelve calendar months, as the coal manager of the said Great Northern Railway Company shall or may require, find and provide a sufficient number of good strong useful horses, in good working condition, and suitable for the purpose of drawing, carrying, conveying, and delivering all such coals, and in such quantities as the said company may require the said Edward Wiggins to haul or carry and convey from their station at King’s-cross aforesaid, to any place or places whatsoever; and in case any of the said horses shall be found insufficient for that purpose, the same shall be immediately removed, and replaced by others on the order of the company’s coal manager; and also find and provide a suitable quantity of good strong useful harness, and all other necessary gear for the same horses, and keep the same in good working order and condition during the whole of the said term; and also, that he the said Edward Wiggins, his executors, administrators, and assigns, shall and will provide a sufficient number of just, true, and proper weighing machines and legal weights (such as are or may be by law required for that purpose) to accompany all such coals as may be carried and delivered by the said Edward Wiggins; and keep the same weighing machines and weights duly and properly adjusted and stamped; and in case any fines or penalties shall or may be incurred in consequence of the same weighing machines or weights being illegal, unjust, defective, or in an improper condition, or in consequence of the neglect of any person engaged in conveying such coals, refusing to weigh any coals on delivery, or neglecting or omitting to carry such weights, or from any cause whatsoever, that the said Edward Wiggins, his executors, administrators, and assigns shall and will pay and satisfy and discharge all such fines and penalties, and well and effectually save harmless and keep indemnified the said company, their successors, and assigns from and against the same and all charges and expenses to be incurred

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in relation thereto; and also shall and will find and provide a sufficient number of steady and honest carmen and other persons for the delivery of all coals into the cellars or any other part of the premises of the persons for whom the coals are intended, and also for collecting and receiving and duly accounting for the moneys received for the same and for all other purposes connected with the due delivery of the coals or receiving or accounting for the moneys for the same; and that such carmen and other parties shall, during the time they shall be in the employment of the said Edward Wiggins, his executors or administrators, obey, perform, and execute, in all things connected with the carrying and delivery of coals and receipt and payment of moneys received by them, the orders, commands, and directions of the company's coal manager, or such other person or persons as may be appointed by them for that purpose; and also that such carmen and other persons shall be strictly prohibited from asking, taking, or receiving any fee or gratuity whatsoever from any person to whom they may be employed to deliver coals, and shall be subject to the same rules and regulations as the servants of the company; and in case of disobedience of orders or other misconduct, shall be immediately discharged from the employment of the said Edward Wiggins, and that he the said Edward Wiggins, or the said carmen or other parties, shall and will, day by day, and every day, well and truly pay, account for and deliver to the said company's coal manager, all cheques, moneys and cash, bills, or notes which they may at any time receive from any person or persons whomsoever for payment of all or any coals delivered by them," &c., &c.

Dearly (for the prisoner).—To constitute embezzlement, the money must have been received for and on account of the master; but here the money was received for and on account of the railway company. The contract between Wiggins and the company clearly shows that to be so. There was never to be any accounting on the part of the carman to Wiggins, his master. The only account that ever passed between Wiggins and the company was, as to the amount of cartage due from the latter to the former. The money received for the coals, and which is the subject of the present indictment, Wiggins had nothing whatever to do with. The course of business was for the carman to go to the company's offices to receive from them an invoice of the coals, and attached to that invoice was a receipt for the price, which receipt was to be given to the customer when the money was paid to the carman, and his duty then was to take the money at once to the company, and pay it to them without the intervention of Wiggins. It is therefore, by virtue of the company's invoice, that he gets the money into his hands, and to them it is his duty to account.

COLERIDGE, J.—But is not the master liable for the fidelity of the carman?

PARKE, B.—Could Wiggins maintain an action for money had and received against the carman for money received from a customer, but not yet paid over to the company?

Dearsly.—I contend that he could not. The servant has never received the money on account of Wiggins at all. It is true Wiggins hires him; and he is nominally in his service; but virtually he transfers his services to the company. He sends him to them, and tells him to obey their instructions. The servant goes accordingly, and is then placed under the control of the company. Surely Wiggins is estopped from saying that the carman is to account to him and not to the company: this is not only against the directions of the company, but contrary to the positive agreement between them and Wiggins.

COLERIDGE, J.—But is not the receipt by the servant a receipt by Wiggins himself?

Dearsly.—No. If Wiggins were to ask the servant, after he had received certain money for the company, to give it up to him, he would be quite justified in refusing.

LORD CAMPBELL, C.J.—Certainly the agreement under which the servant is acting seems to establish a privity between him and the company; and if an action were brought against him by them for money had and received, it is difficult to see what answer he would have.

Dearsly.—I submit that he would have none. He has assented to the terms on which the company employ him, which are, that the money he receives shall be handed over to them; and he could not afterwards set up a right in any other person.

COLERIDGE, J.—But it seems to me that you do not give full effect to the absolute covenant by Wiggins—that he or his servant will day by day account. Does not that imply that Wiggins is the real receiver as well as the accounter?

Dearsly.—The whole scope of the agreement is, that Wiggins shall furnish horses and men; and he guarantees the efficiency of the former and the honesty of the latter; but that does not in any way affect the relation between the carman and the company.

CROMPTON, J.—Is not the purport of the undertaking this, that Wiggins is to do, by himself or his servants, all that he covenants to do; and that, when his servants receive and pay, it is a receipt and payment by him?

Dearsly.—No; because, by the very terms of the contract, when the carman receives, Wiggins is to have nothing to do with the transaction. He might receive money himself, and then it was, of course, his duty to pay it over; but when the man received, he was not even made cognizant of the fact. Wiggins has dispensed with the obedience of the servant.

CRESSWELL, J.—He is the company's servant *pro hac vice*, with the consent of the master.

MAULE, J.—It must be conceded that the immediate authority to the carman to receive, was from the company.

Dearsly.—And this was in pursuance of the agreement that Wiggins himself had entered into. He had no longer any power over the servants until the directions of the company were complied with.

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WILLIAMS, J.—Do you contend, then, that Wiggins could not have dismissed the carman after he had received directions from the company?

PLATT, B.—Suppose that Wiggins, after the carman had received money, had reason to believe he meant to abscond with it, do you mean to say he could not demand the money from him?—the money for which he himself was responsible.

Dearly.—If the carman had become the servant of the company and Wiggins was a mere surety for his fidelity, of course he could have no control over the servant of others.

CROMPTON, J.—If he owes no duty to the company but that which the master has directed him to pay, does not the master's authority override every other? If the master has given the carman certain orders, may he not, at any time, revoke those orders? Suppose there was negligence in driving the carts, so that damage was sustained by the company, could they not sue Wiggins?

Dearly.—Probably so, because Wiggins has absolute control over every thing relating to the cartage of the coals. With respect to the receiving of money by the carman, he has none.

CROMPTON, J.—Then do you contend that the company could have prosecuted him for the embezzlement of this money?

Dearly.—It is not necessary that I should rest my argument upon that. It may be, that under the circumstances, he is the servant of no one, as far as an indictment for embezzlement is concerned. At all events, I submit that he is not the servant of Wiggins, so as to render him amenable upon the present charge.

Giffard, for the defendant.—The fallacy of the argument on the other side consists in supposing that because the carman was to account to the railway company, it was by any other authority than that of Wiggins. It is Wiggins that acts throughout. The carman is no party to the contract.

MAULE, J.—But the point contended for is, that Wiggins having engaged that the carman should receive the money on account of the company, cannot now turn round and say it was received on his account.

Giffard.—But I submit that the carman does not receive the money in his individual capacity, but as the servant of Wiggins, and therefore that Wiggins receives by the hand of his servant. Wiggins is to be answerable that all money received by the carman should be paid over: that shows that he is the principal throughout. If the carman had not been mentioned in the contract, then there could be no doubt that Wiggins would be bound to receive and pay over, and probably the reason for mentioning the carman at all was, that the company would not be supposed to enter into any implied contract with them, but would treat them entirely as the servants of the persons with whom they contracted.

LORD CAMPBELL.—Is the ultimate responsibility of Wiggins inconsistent with the company, saying "we employ the carman, he is to account to us for the money he receives, but Wiggins indemnifies us against his dishonesty."

Giffard.—The question is, whether the carman is in truth employed by the company; whether he does more than merely take his directions from them in obedience to his master's orders. It can scarcely be maintained that, if the carman was about to abscond with money he had received, that Wiggins would not have authority to claim it from him. The relation of master and servant would still exist between them, the latter would actually hold the money by virtue of the original command he had received to place himself at the disposal of the company. It could make no difference to them whether the money was to be paid through Wiggins or not, since he would always be liable until it came to the company's hands.

MAULE, J.—But is it not clear, from the case, that the defendant received the money for the company? If so, how can he receive it for and on account of Wiggins?

PLATT, B.—The case is consistent with the defendant receiving, as servant of Wiggins, for the company, and with it being his duty still, as such servant, to pay over.

Giffard.—It is not necessary that the servant's duty should be to pay the money actually into the hands of his master. If I tell my servant to obtain money from A., my debtor, and immediately to pay it to B., my creditor, and he absconds with the money, he would be guilty of embezzlement, although the amount was never to come into my hands at all. The paying the money to B., according to my directions, would be, constructively, an accounting to me, and his omitting to do so would constitute the crime. So here, I contend, that the paying the money to the railway company, from time to time, done in pursuance of Wiggins's orders, would be, in fact, an accounting to Wiggins. It is said that money had and received would lie by the company against the carman; but I submit that that is not so, since there would be no privity between those parties. What he does for them he does by virtue of his being in Wiggins' employment, and not from any independent right in them to command his services: (*Cobb v. Becke*, 6 Q. B. 930; *Baron v. Husband*, 4 B. & Ad. 611.)

LORD CAMPBELL.—Suppose the carman was robbed of the money after he had received it, upon whom would the loss fall? I am disposed to think it would fall upon the company.

Giffard.—That might probably be so, but the same might be said if Wiggins himself were robbed of it, in the case of the carman paying the money to him in the first instance. The risk of robbery might be one which the company had impliedly agreed to take upon themselves. The argument on the other side seems to assume that some contract, entirely independent of Wiggins, was entered into between the company and the carman; but this is not so. The company contract with Wiggins—he contracts with the carman. It is only by virtue of these contracts that the carman is to obey any orders of the company. He obeys them merely because Wiggins has told him to do so. His obedience is Wiggins' obedience—his acts are Wiggins' acts.

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Suppose the carman had been an infant, then he could not have made a contract with the company, but still, if Wiggins chose to send him, as carman, the company could not refuse to employ him. With whom then would the contract be made? certainly not with the infant, but clearly with Wiggins. Suppose a house-agent is employed by a landlord to collect his rents, and without interfering in the matter himself, he sends his clerk to the landlord to take instructions, and after having made the collection, pay over the amount to the landlord. If the clerk were to appropriate the money to himself, surely that would be an embezzlement of his master's money. And yet, if he had taken no specific orders from his master, but had merely been told to go to another person and obey the direction that person would give him, this would not constitute him the servant of that person. Suppose in the case in question, the railway company tell the servant to do one thing and Wiggins tells him to do another, can there be a doubt that he would be bound to do the latter?

LORD CAMPBELL.—But are we not to take it that it was part of the arrangement between Wiggins and the carman, that the latter was to obey the orders of the company? And after having so agreed, could Wiggins afterwards contend that the orders of the company were to be disobeyed.

Giffard.—In the case put of the rent-collector, there would be the same understanding between him and his clerk, who would be directly sent to obey the directions of the landlord—there, as here the servant's employer would be answerable for any defalcation. And I submit that it must have been in the contemplation of the company when they took Wiggins's guarantee, that the accounting by the carman was to be an accounting by him.

Dearsly replied.

The COURT retired to deliberate, and on their return judgment was delivered by

LORD CAMPBELL.—This case depends entirely on the question, whether the money was received by the defendant for and on account of the railway company, or of the master, and that depends upon whether any privity was shown to exist between the company and the defendant. There is a difference of opinion amongst the judges upon the subject, but the majority are of opinion that a privity is to be inferred between the defendant and the company, and that he undertook, and that it was his duty to pay the sums he received over to the company. The money therefore was the money of the company, and it was received for and on account of the company, and not on account of Wiggins. The conviction therefore cannot be supported.

Conviction quashed.

Giffard, for the prosecution.

Dearsly, for the defendant.

COURT OF CRIMINAL APPEAL.

*January 21 and 28, 1854.**(Before JERVIS, C. J., MAULE, J., WIGHTMAN, J., PLATT, B.,
and WILLIAMS, J.)*

REG. v. OVERTON. (a)

*Embezzlement—Stamp—Receipt.**S. & Co. were in the habit of entering in a book the names of creditors. by whom goods were supplied by them. Such names were in the first column, and in the third column was the amount of the goods so supplied.**The second, or intervening one, was reserved for the signatures of the persons to whom the money was paid, and who were required to sign, at the time of payment, no other receipt or voucher being ever asked for. The prisoner being clerk to a creditor of S. & Co., called for the amount of their debt, which in due course was paid him, and he signed his name in the second column of the book before-mentioned, between the entry of his employers' names and the sum due to them.**Held, on an indictment against him for embezzling that sum of money, that the entry was a receipt within the stamp laws, and, being unstamped, the whole of the entry ought not to have been read to the jury, although it was tendered and admitted in evidence solely with the view of identifying the prisoner as the person to whom the money was paid—the payment having been proved aliunde.**Semle, that the signature alone might have been used, one witness proving that it was written by the person who received the money, and another proving that the handwriting was that of the prisoner.*

THE following case was reserved from the Central Criminal Court, by the learned Recorder of the City of London:—

CASE.

At the General Session of Oyer and Terminer and Gaol Delivery, holden for the jurisdiction of the Central Criminal Court, on the 28th November, 1853, Henry Nelson Overton was tried and convicted before me, of embezzling the two sums of 23*l.* 14*s.*, and 12*l.* 4*s.* 6*d.*, received by him on account of his masters, Joshua Proctor, Brown, Westead and others. Thomas Stone, a clerk in

(a) Reported by B. C. ROBINSON, Esq., Barrister-at-Law.

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the employment of Messrs. Shoolbred & Co., deposed to having paid two cheques for those amounts on account of the said Joshua Proctor, Brown, Westead & Co., trading under the firm and style of the Patent Wadding Company, to a person who, at the time of the payment, named the amount due to his employers, and subscribed the entry in the book of Messrs. Shoolbred, which was produced at the trial. This book was kept in the form of the *fac simile* hereunto annexed. In one of the columns were entered the names of all the creditors who had supplied the firm of Shoolbred & Co. with goods, and in the last column, and opposite to the names of the creditors were entered all the sums due to each, and in an intervening column was written the signature of the person who received the money at the time when each account was paid. The course of business was this, viz., when any person called for the amount due to any creditor whose name was entered in the book, he was asked the amount of the debt claimed, and if the amount thereupon named by him corresponded with the amount entered in the book, the debt was immediately paid by Messrs. Shoolbred's clerk, and the person receiving it was required to sign his name in the middle column of the book, intervening between the name of the creditor and the sum entered as the amount of the debt. No other receipt was required or taken by Messrs. Shoolbred; but, on the other hand, if an entire stranger to both parties called for the debt, and mentioned the amount correctly, as entered in the book, he would receive the money, upon writing his signature opposite the entry, as above described.

Parry, for the prosecution, tendered this entry in evidence, and proposed, by means of the signature, to identify the prisoner with the person receiving the cheques.

Ribton, for the prisoner, contended that the entry could not be read, and objected that, being unstamped (which was the fact), it was inadmissible against the defendant, either in whole or in part. I overruled the objection, and received the entry in evidence. It appearing that the signature was that of the defendant, and the other necessary facts having been proved, the defendant was convicted. Entertaining, however, some doubts upon the correctness of my ruling, I consented to reserve the point for the consideration of the justices of either bench, and barons of the Exchequer, in pursuance of 11 & 12 Vict. c. 78. And the foregoing is the case upon which their determination is requested, and whether the entry in the book was a receipt for money within the Stamp Acts, and whether, being unstamped, it was improperly admitted in evidence?

Judgment has been respited upon the prisoner, and he stands committed to Newgate, awaiting the result of this case.

J. STUART WORTLEY,
Recorder of the City of London.

Fac Simile above referred to.

1853			£17,000	£12,000	REG. v. OVERTON. 1854. Embassment.
Nov. 1	A. B. & Co.	John Doe		£100	
2	C. D. & Co.	Rich. Roe			
3					
4					
5					
27	Patent Wadding } Company	H. N. Overton		£22 4 0 14 6 0	
28					
29					

The case was partly argued on the 21st January, but was sent back to the learned Recorder, to be amended—upon the following order:—

Court for the consideration of Crown Cases Reserved, pursuant to the statute 11 & 12 Vict. c. 78.

At a sitting of the said court, holden at Westminster on the 21st day of January, A.D., 1854, before the Justices of either bench, and Barons of the Exchequer, the Lord Chief Justice of the Court of Common Pleas presiding, assembled for the purpose of hearing and determining questions of law, reserved for their consideration, under and by virtue of the statute in that behalf.

The Queen
v.
Henry Nelson Overton. } A case having been transmitted from the Recorder of London, to the said justices and barons, setting forth the conviction of the said Henry Nelson Overton, at a session holden for the jurisdiction of the Central Criminal Court, and stating certain questions of law which had arisen upon his trial, and been reserved for the consideration of the said justices and barons. Now the said justices and barons having duly proceeded to the hearing and determining of the said questions, it was considered by the said justices and barons, that the said case required amendment, and that the same should be amended, so as to disclose whether the whole of the entry therein referred to was tendered in evidence upon the trial of the said Henry Nelson Overton, and whether the said Recorder had ruled that the whole of such entry might be read in evidence, or the signature of the said Henry Nelson Overton thereto only.

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And if the whole of the said entry had been given in evidence, or used before the jury upon the said trial.

MARSHALL STRAIGHT,
Clerk of the said Court.

FURTHER STATEMENT.

This case having been sent back for amendment, in the manner required by the order of the court for the consideration of Crown Cases Reserved, pursuant to the statute 11 & 12 Vict. c. 78, bearing date the 21st January, A.D., 1854, I now state that the signature was offered in evidence by the prosecution, to prove the identity of the prisoner, and the rest of the entry was adverted to by the counsel for the prisoner, without objection on the part of the prosecution. Under these circumstances, I overruled the objection taken by Mr. Ribton, and received the whole entry in evidence, in order, by means of the signature thereto, to identify the prisoner as the person to whom a witness had already proved that he had paid the cheques. I ruled that the said entry might be read in evidence for that purpose only, and it was read to the jury accordingly.

J. STUART WORTLEY,
Recorder of the City of London.

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Metcalfe, for the prisoner, contended that the entry was a receipt within the statute 55 Geo. 3, c. 184. The words in the schedule, part 1, were, "any receipt or discharge, note, memorandum or writing whatever given to any person for or upon the payment of money which shall contain, import or signify any general acknowledgment of any debt, &c. having been paid." This entry was intended by the parties to constitute a discharge, and would have been abundant evidence of payment, in case the money had been again demanded.

WIGHTMAN, J.—But as I understand it, this was not tendered for the purpose of proving the receipt of money, but merely to show the identity of the prisoner with the person receiving it. The witness in effect says, the person who wrote the name was the person whom I paid.

Metcalfe.—But the person who wrote it did so as and for a receipt, and, therefore, to use the entry for the purpose of proving identity, is to use it for the purpose of a receipt.

JERVIS, C. J.—Suppose that the person who received the money was called upon to write down his address, and the witness was to say, I paid the person who wrote that address, although I cannot recollect his features. Surely, on proof that that was the handwriting of the prisoner, the evidence would be sufficient.

Metcalfe.—But the case expressly finds that no other receipt was given, and it is obvious that the signature was required as a voucher that the money had been paid and received. It is not necessary that the receipt should be in any particular form of

words: it is sufficient that the writing, whatever it may be, was intended to be evidence of the debt having been discharged. In *Spawforth v. Alexander* (2 Esp. 620), a person who wrote "settled" on an invoice was held liable to a penalty for giving a receipt without a stamp.

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PLATT, B.—But is not the payment here proved *aliunde*? The witness says, I know that I paid the money, and the person to whom I paid it is the person who wrote that name. It is the same as if the individual who had received it had, whilst he waited in the office, scribbled his name on a piece of waste paper, and that was afterwards used to establish identity.

Metcalf.—But the evidence necessary to establish the payment of the money to the prisoner would not be complete without the production of the entry. To say that he had paid the money would amount to nothing, unless it could be shown to whom he paid it. In *Mattheson v. Ross* (2 Ho. of Lords Cas. 286), Lord Campbell says: "With respect to this question of evidence, my opinion is that, if a document, purporting to be a receipt, but unstamped, is offered in evidence during a trial, if it would be evidence when stamped as a receipt to establish any point that is litigated between the parties, it cannot be received for a collateral purpose merely because of the parties saying, 'I offer it for a collateral purpose only, so you must take the receipt part as not written.' I think you cannot in that manner abstract a part of a document, and give the rest in evidence."

MAULE, J.—Does not the purpose for which the evidence is offered render it immaterial what the writing is? The witness might know a particular flourish of the prisoner's pen.

JERVIS, C. J.—Does it amount to more than this? Suppose the witness had said, the person whom I paid, left a penknife on the desk, and that penknife belongs to the prisoner.

Metcalf.—No doubt the receipt of the money may be proved by other circumstances; but if it is sought to be established by a written document which evidences it, that document must be stamped. In *Evans v. Protheroe* (20 L. J. 448, Ch.), upon the trial of an issue, whether A. had agreed with B. for the purchase of certain leasehold premises, a receipt for the purchase-money by B. not properly stamped was rejected as evidence of the agreement. So in *Jardine v. Payne* (1 B. & Ad. 663), a bill wrongly stamped was held inadmissible for the purpose of proving an indorsement. Even if the signature here might have been looked at for the purpose of proving identity, the reading the whole entry ought not to have been permitted.

Parry (for the prosecution).—The whole entry was no doubt read, but that was merely to show that the person receiving the money was the prisoner. The case expressly finds that such was the object. In *Mattheson v. Ross* the doctrine was clearly laid down that a document, though unstamped, might be read for a purely collateral purpose. There Lord Cottenham observes that where a document purports, on the face of it, to be a receipt, but

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also something else, it may be received for purposes relating to its secondary character, although unstamped; but, secondly, this entry does not amount to a receipt within the stamp laws. It is nothing more than a memorandum of the name of the person who receives the money.

MAULE, J.—In a late case of *R. v. Snelling* (23 L. J. 8, M. C.) it was held that a document, purporting to be an order for the payment of money, though not addressed to any one, was still an order within 11 Geo. 4 & 1 Will. 4, c. 66, if it could be explained by evidence to whom it was in fact addressed.

Parry.—The word “order” in that statute has long received a particular interpretation. But with respect to receipts, it was held in *R. v. Harvey* (R. & R. 227), that the following document, “Wm. Chinnery, Esq., paid to X Tomson the som of 8 pounds, Feb. 13, 1812;” but with no signature, was not a receipt in form, and could not be explained by parol evidence.

JERVIS, C. J., cited *R. v. Boardman* (2 M. & R. 147), and *R. v. Hunter* (2 Leach, 624.)

Metcalfe replied.

JERVIS, C. J.—I am of opinion, in this case, that the conviction was wrong. The question turns upon two points. First, was the entry in the book a receipt? Secondly, could it be used in evidence as it was used, being unstamped? I think that it was a receipt within the stamp laws, and therefore required a stamp. The Criminal Law has attached penalties for the forgery of a receipt; and *R. v. Hunter* shows that a document containing a signature without more, may, by apt and proper averments, be made to signify a receipt. The course of business in this case shows that, on receiving the money, the person who took it was required to put his name upon the paper, and the case *aliunde* states such facts as clearly show it to have been a receipt. I think myself therefore bound by *R. v. Hunter*; and that, if a stamp was required, the entry could not be read for a purpose involving the proof of the receipt of the money by the prisoner. Inasmuch, therefore, as it appears that the whole entry was read, that course was wrong. At the same time, I think the witness might have been asked, whilst the book was lying before him, whether he paid the money to the person who signed that book; and, afterwards, proof that that was the prisoner's signature might have been given. The mode of proof would then be the same as by showing that he had left a knife behind him when he received the money, and would be free from any objection created by the stamp laws.

MAULE, J.—I agree that this conviction was wrong. The entry means that the prisoner received money from certain persons on behalf of others. That evidence was read to the jury. Clearly the receipt of the money was a matter not to be proved by this entry, as it was not stamped. Then, it is said that the entry was merely read to prove that the prisoner was in a certain place when the money was paid, but it proves that he received the money. It is not used merely for a collateral purpose, but for one in which the

receipt of the money is involved. If one witness had merely said, "The person I paid the money to wrote his name upon a piece of paper," and another witness proved, on looking at the paper, that it was in the handwriting of the prisoner, that would be unobjectionable. But here the whole entry is read to the jury, and by it payment to the prisoner is proved. The entry being unstamped, I think, therefore, it was inadmissible.

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WIGHTMAN, J.—Two points are involved in this case, but the decision on the first point renders the consideration of the second unnecessary. The entry, as explained, by the evidence, amounted to a receipt within the meaning of the stamp laws. I agree to what the Chief Justice and my brother Maule say, that the signature might have been used, although unstamped, to establish the identity of the prisoner. But the entry ought not to have been read *in extenso* to the jury, as it proved the receipt of the money by the prisoner. The conviction, therefore, was wrong.

PLATT, B.—I think also that this entry is a receipt under the stamp laws. The evidence shows that it was the only receipt taken or intended to be taken. Was it then properly received in evidence? Mr. Parry tendered the whole entry; Mr. Ribton objected to its admission on the ground of its being unstamped. The objection ought to have prevailed. It was a mistake at the time in having the whole received and read, since the signature alone was that which formed the link in the chain to establish the identity.

WILLIAMS, J.—I am of the same opinion. Does the entry amount to a receipt? The evidence showed that the object of taking it was, to prevent the necessity for any further receipt. It is, therefore, within the stamp laws, and clearly ought not to have been read to the jury. Whatever it was intended to prove it did prove, namely, the receipt of the money by the prisoner; and it was not admissible to prove that without its being stamped.

Conviction quashed.

Parry, for the prosecution.

Metcalfe, for the prisoner

COURT OF CRIMINAL APPEAL.

January 28, 1854.

(Before LORD CAMPBELL, C. J., JERVIS, C. J., POLLOCK, C. B.,
 PARKE, B., COLERIDGE, J., MAULE, J., ERLE, J., PLATT, B.,
 WILLIAMS, J., and TALFOURD, J.)

REG. v. ABRAHAM REED AND ANOTHER. (a)

Larceny by servant—Goods in the custody of the servant—Constructive possession of the master.

A servant being sent by his master to fetch coals from a wharf, where the master dealt, went with his master's sacks and cart for that purpose, and received the coals in the sacks, which, when filled, were deposited in the cart. On his way home he fraudulently abstracted from the cart some of the coals.

Held, that as soon as the coals, which were the property of the master, had been deposited in the master's cart, the exclusive possession of the servant was determined, and that a constructive possession of the master began, the servant, thenceforward, having only the mere charge or custody of the coals as a servant; consequently the servant committed a trespass in taking them from the cart, and was properly convicted of larceny.

THE following case was reserved by the Court of Quarter Sessions for the county of Kent:—

At the General Quarter Sessions of the Peace for the county of Kent, holden at Maidstone, on the 4th January, 1853, before Aretus Akers, Edward Burton, and James Espinasse, Esqrs., justices appointed to try prisoners in a separate court, Abraham Reed was tried upon an indictment for feloniously stealing 200 lbs. weight of coals, the property of William Newton, his master, on the 6th December, 1852; and James Peerless was charged in the same indictment with receiving the coals, knowing the same to have been stolen, and was acquitted.

The evidence of the prosecutor, William Newton, was as follows:—"I am a grocer and miller, at Cowden, and sell coals by retail. The prisoner, Reed, entered my service last year, about three weeks before the 6th December. On that day I gave him directions to go to a customer to take some flour, and thence to the station at Edenbridge, for 12cwt. of coals. I deal with the Medway Company, who have a wharf there, Holman being

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

wharfinger. I told Reed to bring the coals to my house. Peerless lives about 500 yards out of the road from the station to my house. Reed went about nine, a. m., and ought to have come back between three and four, p. m.; but as he had not come back, I went in search of him at half-past six, and found him at Peerless's. The cart was standing in the road opposite the house, and the two prisoners were taking coals from the cart in a truck basket. It was dark. I asked Reed what business he had there, he said, 'to deliver half a hundredweight for which he had received an order from Peerless.' Reed had never before told me of such an order, and had no authority from me to sell coals. Later that evening I went and asked Peerless what coals he had received from my cart, he said, half a hundredweight. I then asked him how they were carried from the cart; he said, in a sack. I weighed the coals when brought home, and found the quantity so brought a quarter of a hundredweight and four pounds short. I went to Peerless's next day and found some coals there, apparently from half to three quarters of a hundredweight." Upon his cross-examination he stated as follows:—I believe Peerless had sometimes had coals from me; when I came up they were shutting the tail of the cart, but some coals were in a truck basket at their feet. Reed said at once that he had received an order from Peerless. It was two hours later when I asked Peerless, and when he said he had ordered them. Reed said he had carried two hundred weight in, but that was two hours after." On his re-examination he said:—"I think Peerless had had some coals from me about a fortnight before the 6th." James Holman, another witness for the prosecution, said, "I am wharfinger to the Medway Company, at the Edenbridge station, and Newton deals there for coals. Reed came on the 6th December, and asked for half a ton for Newton, and I supplied him. I entered them at the time to Newton, and now produce the book with the entry." James Handley, another witness for the prosecution, said, "I am superintendent of the Sevenoaks division. On the 7th December, I went to Peerless's, and asked him how much coals he had received from Reed; he said he had ordered half a hundredweight three weeks before; Reed, when I asked him afterwards, said, three days before; Reed said he had received two glasses of wine from Peerless." On his cross-examination he said, "This was about four p. m., 7th December." Newton was then re-examined, and said:—"Reed came to me in the morning of the 7th; I told him 2½ cwt. were missing. He then said one sack had been left at the wharf by mistake; I therefore charged him with only three-quarters of a hundredweight." Holman, upon re-examination, said:—"Reed left a sack behind him; but it was an empty one." This being the case for the prosecution, Mr. Ribton, counsel for the prisoner, submitted that there was no case to go to the jury on the charge of larceny, inasmuch as the coals left at Peerless's had never been in the possession of Newton, the master. Mr. Rose,

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counsel on the part of the prosecution, contended that the coals were constructively in the possession of Newton, and that the offence was properly charged as larceny; but that, under the provisions of the act 14 & 15 Vict. c. 100, s. 13, it was immaterial whether the offence were larceny or embezzlement, as the jury might find a verdict either for larceny or embezzlement. Mr. Ribton then proposed that it should be left to the jury as a charge of embezzlement; but to this Mr. Rose objected, on the ground that the receiver must then be acquitted. The court were of opinion that there was a constructive possession in the master, and left the case to the jury as a case of larceny upon the evidence, who thereupon found the prisoner, Abraham Reed, guilty. Mr. Ribton then applied to the court to submit the case to the Court of Criminal Appeal, contending that the conviction was wrong in law; as, if any offence had been committed, it was embezzlement, and not larceny. The court acceded to the application, and respite judgment, and discharged Reed, upon his entering into recognizances—himself in 20*l.* and one surety in 20*l.*—to receive judgment at the next Court of Quarter Sessions for Kent.

This case was first argued on the 23rd April, 1853, before Jervis, C. J., Parke, B., Alderson, B., Wightman J., and Cresswell, J., when the Court took time to consider their judgment. The Court afterwards directed that the case should be argued before all the judges; and, in pursuance of that direction, the case was again heard on the 19th November, 1853.

Argument for
prisoner.

Ribton, for the prisoners.—The conviction is wrong. To constitute larceny there must, according to all the definitions of that offence, be a taking from the possession of the owner. Formerly, it was supposed that the taking must be out of the actual possession of the owner, as appears by the recital of the earliest Embezzlement Act (21 Hen. 8, c. 7), which was passed to provide for the punishment of servants converting goods or money entrusted to their keeping by their masters (Dalton's Country Justice, 496); but it is now settled that the possession may be either actual or constructive. In either case the taking constitutes a trespass, which is essential to larceny. Constructive possession is of two kinds: first, where property has been given by the master to the servant for a special purpose, or is put under the servant's charge or custody; secondly, where a third person has given goods to the servant, and the servant has determined his own exclusive possession by some act which vests the possession in the master. The constructive possession in this case, if any, was of the second kind; but there was, in truth, no possession by the master at all.

PARKE, B.—If the goods were the property of the master before the delivery of them to the servant, any act whereby they are reduced into the master's possession is sufficient.

Ribton.—Yes; but not a mere right to the actual possession. The criterion is, whether the goods have reached the place of their ultimate destination? The distinction is between the actual pos-

session and the right to the actual possession. In *Waite's case* (1 Leach, 28; 2 East P. C. 570,), a cashier of the Bank of England abstracted an India bond; but, as the bond had not been previously placed by him in the cellar of the bank, the place of its ultimate destination, the act was held to be not one of larceny.^(b) So, in the present case, the act is not one of larceny, because the coals, though the master had a right to the possession of them, had not reached the place of their final deposit. In *R. v. Bazeley* (2 Leach, 835; 2 East P. C. 571,) money was received by a banker's clerk at the counter, and, instead of putting it into the proper drawer, he purloined it: and that was held not to be larceny, because as against him there was no possession by the master. [LORD CAMPBELL, C.J.—On the former argument my brother Parke suggested that that was money, the subject of account. PLATT, B.—Suppose it to be the duty of the clerk to put the money into a drawer and lock it up, must the drawer be pushed home and locked up before the money has got into the possession of the master?] The drawer on the premises of the master is the ultimate place of deposit. [LORD CAMPBELL, C. J.—Suppose that the servant leaves the horse and cart on the road; has he then determined his duty, so that if he comes back he may steal them?] If he had, it would be embezzlement: (*R. v. Bull*, (c) 2 Leach, 841; *R. v. Foorer*, cited in *R. v. Meeres*, (d) 1 Show. 50; *R. v. Walsh*, (e) 4 Taunt. 258, 276; *R. & R.* 215; 2 East P. C. 177; and *R. v. Spears* there cited.) [LORD CAMPBELL, C. J.—In the report in 4 Taunt. 276, Heath, J., says, "That case went upon the ground that the corn was in the prosecutor's barges, which was the same thing as if it had been in his granary." The report in East is not so. He also cited *R. v. Sullens*, (f) 1 Moo. C. C. 129, and *R. v. Masters*, (g) 3 Cox Crim. Cas. 178; 1 Den. 332. [POLLOCK, C. B.—Suppose he had had to take the coals to a customer at once. How would it be then? In respect to the master, the cart would be the final place of deposit.] The customer's house would have been the final place of deposit. LORD CAMPBELL, C. J.—How do you define the place of final deposit?] That depends on the particular circumstances of each case. In this one, for instance, it is the house of the master. [LORD CAMPBELL, C. J.—When the coals passed the threshold, or the cart passed the gate? A farm house is at the extremity of a

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(b) See 15 Geo. 2, c. 13, s. 12, as to embezzlement by clerks, &c., of the Bank of England; 35 Geo. 3, c. 66, s. 6; 37 Geo. 3, c. 46, s. 6; 4 & 5 Vict. c. 56, s. 1.

(c) *R. v. Bull* was the case of a shopman receiving money from a customer, and secreting it: Held, not larceny.

(d) *R. v. Meeres* was the case of a lodger who stole the furniture of his lodging: Held, not larceny.

(e) *R. v. Walsh* was the case of a broker, who received from his principal a cheque for the purpose of purchasing Exchequer bills. The broker received of the bankers bank bills for the cheque, and applied part in the purchase of Exchequer bills for his principal, but appropriated the rest to his own use and absconded: Held, not larceny.

(f) *R. v. Sullens* was the case of a servant sent to get silver for a 5*l.* note, and absconding with the silver: Held, not larceny.

(g) *R. v. Masters* was the case of a clerk who had received, in due course of business, from a fellow clerk, money to be delivered to the master, and who fraudulently appropriated it: Held, not larceny, but embezzlement.

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field; does the constructive possession cease at the gate of the field, or at the door of the house? PLATT, B.—The cart was in the possession of the master. If he had taken that, it would have been larceny. PARKE, B.—The cart is but the means of transit to the master's house, which was the ultimate place of destination.] In *R. v. Hayward* (1 Car. & K. 518), straw thrown down at a stable door was considered to have reached a place of final deposit. If a banker's clerk collects bills, puts them into his pocket, and abstracts one, the property of his master, which he afterwards converts to his own use, that is embezzlement, not larceny. [JERVIS, C. J.—How do you distinguish the cases of *R. v. Spears* and *R. v. Abrahah* (2 Leach. 828.) LORD CAMPBELL, C. J.—*R. v. Spears* is on all-fours with this case. PARKE, B.—In *R. v. Spears*, it is uncertain, looking at the reports in East and Leach, and the difference between the two editions of Leach, whether the judgment did not turn on the fact that the master had bought the whole cargo.] In that case the master would have had a title and constructive possession before delivery to the prisoner.

Rose, contra.—The act of the prisoner was an offence at common law. The embezzlement statutes are affirmative, and, so soon as a trespass is proved, a larceny is established. There was a trespass in this case; for, as the coals were asked for in the master's name, charged to the master in the bill, put into the master's sacks, and the sacks put into the master's cart, the master had constructive possession before the servant had actual exclusive possession: (Com. Dig. "Trespass," B. 4.) [LORD CAMPBELL, C. J.—The constructive possession of the master need not be distinct from the actual possession of the servant.] What act before the taking in this case divested the master of his constructive possession? *Robinson's case* (2 East P. C. 565); *Paradice's case* (ib.), proceed on the principle that, despite the manual possession of the servant, the constructive possession is in the master. So, if the servant had left the cart and coals, had returned suddenly in the night, and had taken the coals, would he not have been guilty of stealing his master's property? The case of *R. v. Spears* is not to be distinguished from this. In commenting on *Waite's case* and *Bazeley's case*, East reconciles them by saying that there is no constructive possession without the possession of the servant. In *R. v. Bull* the case was one of money, which constitutes matter of account, and trespass would not lie: (*Higgs v. Holliday*, Cro. Eliz. 746.) This is not like the case of a gift to the master, where he never gets possession until delivery to the servant. [LORD CAMPBELL, C. J.—*Spears' case* is to be taken from the second edition of Leach, as is shown by Heath, J., in 4 Taunt. 276. PARKE, B.—If we take it from *Abrahah's case*, the corn was clearly purchased by the master before.] Suppose that another servant had been sent; that he had delivered the order; that the coals had been weighed out; and that the prisoner had then been sent with the cart for the coals, and had stolen some of them—that must have been larceny. In *R. v. Harding* (R. & R. 125), property which the prosecutor had bought

was weighed out in the presence of his clerk, and delivered to the carter's servant to cart, and a fraudulent conversion by the carman was held larceny.

Ribton, in reply.—In *R. v. Harding* the property had been in the actual possession of the master. In *R. v. Watts* (2 Den. C. C. 14), the defendant divested himself of possession in favour, so to say, of his employers. In this case the prisoner has not so divested himself by any distinct act. In *R. v. Watts*, the distinct act was the receipt had of the cheque by the prisoner; it being his duty to his employers to receive it. In this case the coals had not reached their final destination.

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Cur. adv. vult.

JUDGMENT.

LORD CAMPBELL, C. J.—There lies before me a judgment that I had prepared for myself at a time when there was reason to suppose that there might be one, if not more dissenting judges. I have reason to believe now that there will not be any dissent; but still this judgment must be considered only as embodying the reasons I give for my opinion, because I have no authority to say that my brothers concur in that opinion, and the reasons for it. For convenience, I have written my judgment, and my learned brothers will say how far they concur or dissent. I am of opinion that the prisoner has been properly convicted of larceny. There can be no doubt that, in such a case, the goods must have been in the actual or the constructive possession of the master; and that, if the master had no otherwise the possession of them than by the bare receipt of his servant upon the delivery of another for the master's use, although as against third persons this is in law a receipt of the goods by the master, yet in respect of the servant himself this will not support a charge of larceny, because as to him there was no tortious taking in the first instance, and consequently no trespass. Therefore, if there had been a quantity of coals delivered to the prisoner for the prosecutor, and the prisoner, having remained in the personal possession of them, as by carrying them on his back in a bag, without anything having been done to determine his original exclusive possession, had converted them *animo furandi*, he would have been guilty of embezzlement, and not of larceny. But if the servant has done anything which determines his original exclusive possession of the goods, so that the master thereby comes constructively into possession, and the servant afterwards converts them *animo furandi*, he is guilty of larceny, and not merely of a breach of trust at common law, or of embezzlement under the statute. On this supposition he subsequently takes the goods tortiously in converting them, and commits a trespass. We have therefore to consider whether the exclusive possession of the coals continued with the prisoner down to the time of the conversion. I am of opinion that this exclusive possession was determined when the coals were deposited in the prosecutor's cart, in the same manner as if they

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had been deposited in the prosecutor's cellar, of which the prisoner had the charge. The prosecutor was undoubtedly in possession of the cart at the time when the coals were deposited in it; and if the prisoner had carried off the cart *animo furandi*, he would have been guilty of larceny. That is expressly determined in *Robinson's case* (2 East, 565.) There seems considerable difficulty in contending that, if the master was in possession of the cart, he was not in possession of the coals which it contained, the coals being his property, and deposited there by his order, for his use. Mr. Ribton argued that the goods received by a servant for his master remain in the exclusive possession of the servant till they have reached their ultimate destination. But he was unable, notwithstanding his learning and ingenuity, to give any definition of "ultimate destination," when so used. He admitted that the master's constructive possession would begin before the coals were deposited in the cellar, when the cart containing the coals had stopped at his door, and even when it had entered his gate. But I consider the point of time to be regarded is that when the coals were deposited in the cart. Thenceforth the prisoner had only the custody or charge of the coals, as a butler has of his master's plate, or a groom has of his master's horse. To this conclusion, with the most sincere deference to any of my learned brothers who may at any time have taken a different view—to this conclusion I should have come on principle; and I think that *Spears' case* is an express authority for it. The following is an exact copy of the statement of that case, signed by Buller, J., in pp. 181, 182, and 183 of the 2nd volume of the Black Book, containing the decisions of the judges in Crown cases, deposited with the Chief Justice of the Queen's Bench for the time being:—John Spears was convicted before me at Kingston, for stealing forty bushels of oats of James Broune & Co. in a barge on the Thames. Broune & Co. sent the prisoner with their barge to Wilson, a corn meter, for as much oats only as the barge would carry, and which were to be brought in loose bulk. The prisoner received from Wilson 220 quarters in loose bulk, and five quarters in sacks; the prisoner ordering that quantity to be put into sacks. The quantity in the sacks was afterwards embezzled by the prisoner; and the question reserved for the opinion of the judges is, whether this was felony, the oats never having been in the possession of the prosecutor; or whether it was not like the case of a servant receiving change or buying a thing for his master, but never delivering it." Then there is a reference made to Dy. 5, and 1 Show. 52; and then this is signed by Sir J. Buller; and then is added, "25th April, 1798. Conviction affirmed." Now that is an exact copy from the Black Book. In that case the question arose, whether the corn, while in the prosecutor's barge, in which it was to be brought by the prisoner to the prosecutor's granary, was to be considered in the possession of the prosecutor; and the judges unanimously held, that from the time of its being put into the barge it was in the prosecutor's possession, although the prisoner

had the custody or charge of it. That case has been met at the bar by a suggestion that the whole cargo of corn, of which the quantity put on board this barge was a part, was or might have been purchased by the prosecutor, so that he might have had a title and constructive possession before the delivery to the prisoner. But the very statement of the case in the Black Book, and the authorities referred to, show that the judges turned their attention to the question whether the exclusive possession of the servant had not been determined before conversion; and during the argument of *Rex v. Walsh* (4 Taunt. 276), we have the *ratio decidendi* in *Spears' case* explicitly stated by one of the judges who concurred in the decision:—"Heath, J.—That case went upon the ground that the corn was in the prosecutor's barge, which was the same thing as if it had been in his granary." Read "cart" for "barge," "coals" for "corn," and "cellar" for "granary," and the two cases are for this purpose precisely the same. There is no conflicting authority; for in all the cases relied upon by Mr. Ribton, the exclusive personal possession of the prisoner had continued down to the time of the wrongful conversion. It is said there is great subtlety in giving such an effect to the deposit of the coals in the prosecutor's cart; but the objection rests on a subtlety wholly unconnected with the moral guilt of the prisoner, for as to that it must be quite immaterial whether the property in the coals had or had not vested in the prosecutor prior to the time when they were delivered to the prisoner. We are to determine whether this would have been a case of larceny at common law before there was any statute against embezzlement; and I do not think that there would have been any reproach to the administration of justice, in holding that the subtlety arising from the prosecutor having had no property in the subject of the larceny before its delivery to the prisoner, who stole it, was sufficiently answered by the subtlety that when the prisoner had once parted with the personal possession of it, so that a constructive possession by the prosecutor began, the servant who subsequently stole it should be liable to be punished, as if there had been a prior property and possession in the prosecutor, and that the servant should be adjudged liable to be punished for a crime, instead of being allowed to say that he had only committed a breach of trust, for which he might be sued in a civil action. In approaching the confines of different offences created by common law or by statute, nice distinctions must arise, and must be dealt with. In the present case it is satisfactory to think that the ends of justice are effectually gained by affirming the conviction; for the only objection to it is founded upon an argument that he ought to have been convicted of another offence of the same character, for which he would have been liable to the same punishment.

JERVIS, C. J.—I concur in the judgment of the Lord Chief Justice. I had originally written a judgment concurring in the view taken by my lord; but ultimately I have not found it necessary to read it. It is admitted that the cart was in the possession of

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the servant for a special purpose; if he had taken the cart, he would have been guilty of larceny; and if the cart for this purpose continued the cart of the master, the delivery of the coals into the cart was a delivery to the master, and makes the offence a larceny.

PARKE, B.—I certainly had differed from the view of this case which has been taken by Lord Campbell at a time when it was uncertain what the case of *Spears* actually was, and treating this case as *res nova*. The book in which the opinions of the judges are written, and which is always in the custody of the Lord Chief Justice, was mislaid; and the case of *John Spears* was differently reported in the two editions of Leach, and also in East's Crown Law; and that case could not for a long time be found. However, since it has been found, I have satisfied myself; and I entertain no doubt upon it. I should have delivered my reasons at length; but it is unnecessary now to do so. The cases of *Rex v. Abrahams* and *Rex v. Spears* having been discovered, and having read that case with the explanation of Heath, J., I find the point decided; and though, therefore, if this were *res nova*, I should have pronounced an opinion that this was not larceny, yet as that case is a decided authority, by the authority of that case I am bound; and it is unnecessary for me to deliver my reasons at any greater length.

The other judges concurred.

Conviction affirmed.

COURT OF CRIMINAL APPEAL.

January 28, 1854.(Before JERVIS, C. J., MAULE, J., WIGHTMAN, J., PLATT, B.,
and WILLIAMS, J.)

REG. v. JOHN BURTON. (a)

*Larceny—Corpus delicti—Evidence.**Upon the trial of an indictment for larceny, if the circumstantial evidence satisfies the jury of the guilt of the prisoner, he may be convicted, though the prosecutor is unable to swear that he has lost the thing charged to have been stolen.***T**HE following case was reserved by the Assistant Judge of the Middlesex Sessions.

John Burton was indicted at the January Sessions, 1854, for the county of Middlesex, for stealing a quantity of pepper. It was proved on the trial by the person having charge of the warehouse, that the prisoner was seen coming out of the lower room of a warehouse in the London Docks, in a floor above which a large quantity of pepper was deposited, some in bags and some loose upon the floor, and that the witness having suspicion of the prisoner from the bulky state of his pockets, stopped him, and said, "I think there is something wrong about you," upon which the prisoner turned and said "I hope you will not be hard with me," and threw a quantity of pepper out of his pocket on the ground. The witness further proved that no pepper was missed, and that he could not say from the large quantity of pepper that was in the warehouse, that any had been stolen, but the pepper found upon the prisoner was of the like description with the pepper in the warehouse. The prisoner had no business in the warehouse. It was contended by the prisoner's counsel on the authority of *R. v. Dredge* (1 Cox Crim. Cas. 235), that, upon this state of facts, the judge was bound to direct an acquittal. I overruled the objection, being of opinion that, notwithstanding the statement of the witness, that he could not swear that any pepper was stolen, there was evidence to go to the jury.

The jury returned a verdict of guilty; and the question reserved for the consideration of the court is, whether I ought to have directed a verdict of acquittal, or to have left the case for

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

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the consideration of the jury? If the court should be of opinion that the case ought not to have been left to the jury, a verdict of acquittal is to be entered.

Judgment on the conviction was postponed, and the prisoner was committed to the House of Correction, Cold Bath-fields.

Ribton, for the prisoner.—This case failed from the absence of direct proof of the *corpus delicti*; and *R. v. Dredge* (1 Cox Crim Cas. 235), is in point; the marginal note of that case is "In a charge of larceny, if the prosecutor cannot swear to the loss of the article said to be stolen, the prisoner must be acquitted.

MAULE, J.—The circumstances of that case were wholly different. It was a charge against a little boy of stealing a doll.

Ribton.—Erle, J. expressly decided that case on the ground that the *corpus delicti* was not proved.

MAULE, J.—The offence with which the prisoner is charged must be proved; and that involves the necessity of proving that the prosecutor's goods have been taken; but why is that to be differently proved from the rest of the case? If the circumstances satisfy the jury, what rule is there which renders some more positive and direct proof necessary?

Ribton.—Lord Hale (2 Hale, 290) lays it down as a rule, never to convict a man for murder or manslaughter on circumstantial evidence alone, unless the body be found.

MAULE, J.—Not as a rule, but as a caution.

Ribton.—One at all events of general application (Stark. Evid. 2nd. ed., vol. 1, p. 512; vol. 2, p. 450, 513; *Evans v. Evans*, 1 Hagg. Consist. Rep. 35, 105; *Dickson v. Evans*, 6 T. R. 57.)

No counsel appeared for the prosecution.

JERVIS, C. J.—We are all agreed that there is no foundation for the objection, and that the conviction is right.

The other judges concurred.

Conviction affirmed.

COURT OF CRIMINAL APPEAL.

January 28, 1854.

REG. v. SAMUEL GILL. (a)

*Embezzlement of money marked by the master, and delivered to a third person to be used for the purpose of detection.**A. marked money, and delivered it to a third person, that he might there-with buy goods at A.'s shop, of his shopman B. He did so, and B. having received the marked money, instead of putting it in the till, as his duty was, secreted it.**Held, that B. was properly convicted of embezzlement.*

THE following case was reserved by the Assistant Judge of the Middlesex Sessions.

Samuel Gill was convicted at the November Clerkenwell Sessions, 1853, for stealing one crown-piece, the property of his master. It was proved at the trial, that the master, who was a licensed victualler, suspecting the prisoner, marked the crown-piece in question, and two half-crowns, and gave them to one T. W. for the purpose of purchasing spirits of the prisoner, who was prosecutor's barman. T. W. accordingly, early the next morning, purchased at the bar some brandy, and paid the prisoner with the marked money, and it was his duty to have placed the same in the till. When his master came down, he looked into the till, and found there the two half-crowns only. Upon the prisoner being charged with the offence, he admitted the receipt of the crown-piece, but said that he had given it away as part of the change for half-a-sovereign. The crown piece was found in a bag in his box, separate from his other silver, which was wrapped in a paper. The jury acquitted the prisoner of larceny, but found him guilty of embezzlement. The judgment has been respited, and the prisoner committed to the House of Correction at Cold Bath-fields, to abide the decision of this case.

The question reserved for the consideration of the court is, whether, upon the facts as proved, the offence is larceny or embezzlement.

No counsel appeared for the prisoner.

Clarkson, for the prosecution—The conviction is right. The money was received by the prisoner for and on account of his master, from a third person. It was not a receipt by the prisoner from his master, because the master had altogether parted with the possession. The case of *R. v. Hodge* (R. & R. 160; 2 Leach, 1033), is expressly in point. There the indictment was for embezzlement under statute 39 Geo. 3, c. 85; and although the property had been in the possession of the prisoner's masters, and they had only entrusted the custody of it to a third person to try the honesty of their servant, yet it was held that the servant receiving

(a) Reported by A. BYTLESTON, Esq., Barrister-at-Law.

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it from that third person, and appropriating it to his own use, was guilty of embezzlement under the statute.

MAULE, J.—Is it not larceny if goods are sent by the master to a servant to be brought back to the master, and instead of bringing them back, he goes off with them?

JERVIS, C. J.—The difficulty arises from *Peck's case* (2 Russ. 213), where the prisoner received the money from the master himself, to pay it over to a third person, and the wrongful conversion was held not to be embezzlement; and so in *R. v. Murray* (1 Moo. C. C. 276), where the money was constructively in the possession of the master by the hands of another clerk from whom the prisoner received it. (b) The money never ceases to be the master's money in any of these cases. However, I think that we are bound by the express decision in *R. v. Hedge*.

MAULE, J.—I am of the same opinion. The distinction seems to be between the cases where the master parts with the possession, expecting to receive the money or goods back again, as here; and those in which he does not.

The other judges concurred.

Conviction affirmed.

(b) See *R. v. Masters* (1 Den. C. C. 332; 3 Cox Crim. Cas. 178); where money being received on account of his master by one clerk, and handed over in due course of business to another, to be delivered to the master, it was held, that the latter clerk, fraudulently appropriating it, was guilty of embezzlement. The distinction between that case and *R. v. Murray* was pointed out. In the former, the money was stopped on its passage to the master. In the latter, it was given by a fellow-servant to the prisoner, to be paid away on account of the master.

COURT OF CRIMINAL APPEAL.

February 11, 1854.

(Before JERVIS, C. J., MAULE, J., WIGHTMAN, J., PLATT, B., and WILLIAMS, J.)

REG. v. GREEN. (a)

Larceny by servant—Falsifying accounts—Embezzlement—Obtaining balance of account by false pretences.

A farm bailiff, who was authorized to receive money and make payments on behalf of his master, and who kept a book containing entries of such receipts and payments, which was from time to time examined by his master, made false entries in the book, giving himself credit, in several instances, for larger payments than he had in truth made, and, when the book was examined, received from his master a sum of 2l. as the balance due to him upon that account.

Held, that he was not guilty of larceny.

Quære, whether he was not guilty of obtaining money by false pretences?

THE prisoner was indicted at the quarter sessions for the county of Cambridge, on the 3rd day of January, 1854, for stealing,

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

on the 10th day of September last, certain moneys of and belonging to, his master, Alexander Cotton, Esq. The prisoner was bailiff to the prosecutor, and it was part of his duty to receive and make payments on behalf of the prosecutor. An account of these receipts and payments was kept in a book in the prisoner's custody, which was examined by the prosecutor at irregular intervals. An examination was made in July last, and another on the 3rd of December last, and the account comprised within these dates, contained, among other items, the following payments, viz. :—

1853, August 13th.

James Ludkins	- - - - -	£1 8 0
Samuel Pryke	- - - - -	1 8 0
John Brown	- - - - -	1 8 0

and twelve other names, against which stood the same amount. There was a series of similar items, under dates of the 20th and 27th of August and the 3rd, 10th, and 17th of September; and on the 17th of September this series of payments :—

James Ludkins	- - - - -	£0 15 0
Samuel Pryke	- - - - -	0 15 0

and thirteen other similar names, against which stood the same sums of 15s. Brown proved that he was engaged by the prisoner to work for the prosecutor during the last harvest. The rate of wages was not named; but the witness knew that the other labourers were to receive 1l. 8s. a week, and he expected the same. The prisoner paid him 1l. on each of the following days, viz., 13th, 20th, and 27th of August last, and on the 3rd and 10th of September last. The witness complained on the 20th and 27th of August of receiving no more than 1l., and about ten days after the 10th of September, the prisoner paid him 1l. in addition, making his wages 1l. 4s. a week during the five weeks. Ludkins proved that he was engaged by the prisoner for the prosecutor during the harvest, and that he received 1l. 8s. on each of the following days, viz., the 13th, 20th, and 27th of August, and on the 3rd and 10th of September. On the 17th of September, the prisoner paid him 11s. 6d., and on his complaining that he did not pay him 15s., the sum he paid the other labourers, the prisoner said it was because he was working in the barn. Pryke gave similar evidence. Each side of the account, which extended from July to the 3rd of December last, contained numerous items, amongst which were payments made for the purchase of goods by the prisoner on account of the prosecutor. By one of these items the prisoner gave the prosecutor credit for 1l. 5s., which, it was stated by the counsel (though no proof offered of it), he had not in fact received. There was no entry in the book in the handwriting of the prisoner. The prisoner was present during all the time the prosecutor was examining the account, and signed his name to it on the prosecutor doing so; but his attention was not called to any particular item. There was on the account a

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balance of 2*l.* due to the prisoner, which the prosecutor paid him. At the conclusion of the evidence for the prosecution, the prisoner's counsel contended, on the authority of *R. v. Chapman* (1 C. & K. 119), (b) that the evidence would neither support a charge of larceny nor embezzlement, and submitted to the court that, on these facts, the court should direct an acquittal. The chairman directed the jury that the deduction of the five several sums of 4*s.* from the five weekly sums of 1*l.* 8*s.*, to be paid to Brown, and of the two several sums of 3*s.* 6*d.* from the weekly sums of 15*s.* to be paid respectively to Ludkins and Pryke, amounted to larceny; and told the jury that, by a recent act, they were enabled to return a verdict of either larceny or embezzlement, as their minds might be directed by the evidence; on which the jury found a verdict of guilty: whereupon judgment was postponed, and the prisoner discharged on bail to appear and receive judgment at the next quarter sessions for this county. The opinion of the judges was asked, whether the jury could, on these facts, properly convict the prisoner of larceny?

Tozer, for the prisoner.—The only question is, whether the prisoner could be convicted of larceny upon this evidence; but it is submitted that the facts establish neither larceny nor embezzlement. The only sum he is shown to have received from his master is the balance of 2*l.*; and by reason of his falsification of the accounts, it might, perhaps, be said, that he had obtained that sum by false pretences. But it is unnecessary to consider that.

WIGHTMAN, J.—What he did was, to enter as paid money which he had not paid.

JERVIS, C. J.—And so to obtain a balance in his favour. We are all, however, clearly of opinion that, whatever other offence the prisoner may have committed, he is not guilty of larceny, and the conviction, therefore, must be quashed.

Conviction quashed.

(b) *R. v. Chapman*. It was the duty of a clerk to receive money for his employer and pay wages out of it, and to make entries of all moneys received and paid in a book, and to enter the weekly totals of receipts and payments in another book, upon which last book he, from time to time, paid over his balances to his employer. The clerk having entries of weekly payments in his first book amounting to 25*l.*, he entered them in the second book as 35*l.*, and two months after, in accounting with his employer, by these means made his balance 10*l.* too little, and paid it over accordingly: Held, that the clerk could not, on these facts, be convicted of embezzlement without its being shown that he had received some particular sum on account of his employer, and had converted either the whole or part of that sum to his own use. See, also, *R. v. Grove* (7 Car. & P. 635; 1 Moo. C. C. 447); *R. v. Jones* (8 Car. & P. 288); and *R. v. Lambert* (2 Cox C. C. 309), where, after the foregoing authorities had been cited, Erie, J., said: "I think the offence is sufficiently made out within the meaning of the statute, if the jury are satisfied that the prisoner received in the aggregate the amount with which he appears to have charged himself, and that he absconded, or refused when called upon to account, leaving a portion of the gross sum deficient. There would be constant failure of justice if I were to decide otherwise, since it is impossible in cases like the present, where a number of different amounts of money have been received, to specify which sum or sums have been embezzled."

COURT OF CRIMINAL APPEAL.

February 11, 1854.(Before JERVIS, C. J., MAULE, J., WIGHTMAN, J., PLATT, B.,
and WILLIAMS, J.)

REG. v. THE INHABITANTS OF HORNSEA. (a)

*Highway—Indictment for non-repair—Road washed away by the sea.**Where, by natural causes, as by the encroachment of the sea, a highway is wholly destroyed, the liability of the parish to repair no longer exists.*

THIS was an indictment for the non-repair of a highway, tried at the York Spring Assizes, 1853, before Martin, B., who stated the case for the consideration of this Court.

The road was described in the indictment to be a certain common and public Queen's highway, called the Sea Road, leading eastward from the east end of a street in the parish of Hornsea, in the East Riding of the county of York, called East Gate, to the German Ocean; and the indictment alleged that a certain part of the same, &c., lying and being, &c., containing in length, divers, to wit, 210 feet, in breadth, divers, to wit, 40 feet, on the 1st July, 1852, and until the present day was, and yet is, very ruinous, deep, broken, and in great decay, for want of due reparation and amendment. The following facts were proved:—By an Inclosure Act of 1810 (41 Geo. 3), by which certain lands and houses were allotted, it was enacted that the Commissioners, before setting out the allotments, should set out upon the lands to be enclosed, such public and private roads and places with such directions for the repairs of the same, &c., as they should judge proper; and, after giving certain powers to stop up and alter the old roads, that the said public roads should be and remain 40 feet in breadth, at the least; and after providing for the formation and completion of the same, and that they should be put in good repair, and (*inter alia*), that none of the inhabitants of the township of Hornsea, other than the allottees of land, should be chargeable (over and above the statute duty), towards the formation of the new public roads, until they should be fit for travellers and carriages, and the justices at sessions had allowed and confirmed the surveyor's certificate to that effect; it was enacted, that after such allowance, the said roads were to be from time to time amended and kept in repair in the same manner as

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

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other public roads. It was further enacted, that the award should describe all manner of public and private roads, stone-pits, and common watering places for cattle, drains, water-courses, sewers, bridges, fences, and other works and improvements which should be set out by the act; and, that a plan should be annexed specifying and describing the same. When this act passed, the road in question existed as a public highway, and was called the Sea Road. In 1809, the Commissioners made their award (*inter alia*) as follows:—"And we do direct, set, appoint, and award, that there shall be one other public highway or road of the breadth of 40 feet, as the same is now staked, ditched, and bounded out, called the Sea Road, leading eastward from the east end of a street in Hornsea aforesaid, called East Gate, over ancient enclosed lands, belonging to, &c., to the German Ocean." In another part of the award they awarded thus—As to a place abutting on part of the Sea Road, "and called the Landing-place," we do set out, allot, and award one acre of land (be the same more or less), situate, lying, and being in the East-field of Hornsea aforesaid, for the purpose of a landing-place, adjoining the Sea Road on the north, ancient enclosure, lands of Charlotte Bethell, on the east, and on lands herein awarded to P. A., on the south and west. The case provided that everything directed by the act to be done in reference to the road and landing-place was to be deemed to have been done, and that the road was a lawfully existing road under this act. When the road and landing-place were set out, the land of Charlotte Bethell was occupied by a tenant as swarth land; it was ancient enclosed land, but had for a long period been encroached upon by the sea, and at the time of the award was partially covered with sand, and was entirely sand between the entrance to the road in question and the sea, both before and after the award. All persons were accustomed to go down the "Sea Road," but there was no evidence of repairs on Charlotte Bethell's land, nor of any defined road there, but persons used to go over it to the sea, as they pleased, and could go with carriages and on foot to get gravel or sand from the sea shore, or for any other purpose. Vessels also brought cargoes of coal, and anchored at high water, near the entrance of the road in question, and people took carts to the sides of the vessels, and loaded, and then drove as they pleased and could over Charlotte's land, to the entrance of the road in question, and thence into the interior of the country: cargoes of limestone, also thrown overboard from barges near the entrance of the road, were carted away in the same manner. The road before and after the award sloped down towards the sea, which in extraordinary high tides came up to the landing-place. Since the award, the Sea Road has been repaired up to the varying termination of it, as it has been from time to time swept away by the sea. Within forty-four years, and since the award, the high-water mark has advanced on this part of the coast, 104 yards inland, and a portion of Charlotte's enclosed lands, including the piece being between the terminus of

the Sea Road and the sea, has been swept away, half the landing-place, and fifty-two yards of the road inland, before reaching the boundary line of Charlotte Bethell's land. Two and a half yards is about the average annual destruction of the cliff, but as it is alluvial sand and clay, after storms, four or five yards in depth where the road lies have been destroyed at one tide, and about fourteen years ago, a considerable incursion of the sea converted the gradual slope of the road towards the sea, into a perpendicular descent or face, at a part of the road, some little distance inland, before reaching the boundary of Charlotte Bethell's land. As it was impossible then for carriages to get down to the beach, the parish surveyors cut a gap, through the perpendicular face, and made a road down to the then beach, although less commodious than before. Such, however, have been the encroachments since, that the termination of the road now, and when the indictment was preferred, is a perpendicular cliff, twenty feet high, and though a track has been made practicable for donkeys, it is impossible for carriages to get down to the beach. It was further proved, that a new road to the sea had been lately made, that a rate of 2s. 6d. in the pound would produce between 500*l.* and 600*l.*, and the annual ordinary repairs are about 200*l.* To make a substantial concrete road extending fifty yards beyond the cliff, would be about 600*l.*, and about 10*l.* annually would keep both it and the cliff repaired, but a road or pier must extend forty feet beyond, and below high water-mark, at ordinary tides, and be forty-six feet wide at the base, and forty at the top. To cut a gap, and protect it with side-walls, would cost about 200*l.*, and 7*l.* or 8*l.* annually would keep it in repair.

On the part of the defendant, the proof was (*inter alia*) that a gap with side-walls, to be a permanent road to the beach, would cost 1,000*l.*, and the annual repair be 50*l.* to 100*l.*, and that it would not prevent the sea encroaching, and that the masonry and flanking walls of the wings would require frequent moving inland. A conviction of the parish surveyors by the justices, and an order to repair the road under the 5 & 6 Will. 4, c. 50, s. 94, dated Sept. 2, 1852, after the sea had completely stopped the road, but before the cliff was rendered so precipitous, was also proved, but no repairs had ever been made under the order.

The indictment was preferred at the instigation of a Mr. Cunningham, the owner of an hotel and property adjoining the termination of the road in question. It was admitted, that the surface of the existing road was in good repair up to where it had been swept away by the destruction of the cliff by the encroachment of the sea.

MARTIN, B., directed a verdict of guilty to be entered, subject to the opinion of the justices and barons upon the following questions:—Whether there exists a legal duty or obligation upon the parish to provide an available carriage-road towards the beach? If such duty or obligation exists, the verdict is to stand; if not the verdict is to be set aside, and a verdict of not guilty entered.

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Argument.

If the judges and barons be of opinion that such duty exists, they are requested to state what is the description of the road which it is incumbent upon the parish to provide; and it was agreed at the trial, that they should have power to order any fact to be ascertained by a surveyor, or otherwise, in order to enable a final and conclusive judgment to be given upon the indictment. It was also agreed that they should have the same power with respect to costs,^(b) as well of the trial, as of the argument of this case, as a judge would at the trial, or afterwards.

Bliss (*P. Thompson* with him) for the defendants.—This indictment cannot be sustained. It alleges the existence of a common Queen's highway down to the sea, and that that highway is out of repair. But that allegation is negatived by the evidence, which shows, first, that the highway did not at any time extend down to the sea (*R. v. Hatfield*, 4 Ad. & E. 156); and, secondly, that, at all events, it has no existence now, having been swept away by the sea. *R. v. Paull* (2 Moo. & Rob. 307), is exactly like this case; and *R. v. Bamber* (5 Q. B. 287), is also expressly in point; and in other cases also, natural causes have been held to extinguish obligations of a similar kind: (*R. v. Montague* 4 B. & C. 598.) It would not be possible now to restore the road without great engineering works, which would interfere not only with the rights of the owner of the soil of the road, but also with those of adjacent proprietors. (He referred to 4 Vin. Abr. Chimin Common, E. 35; Chimin Private, B. 2, D. 2; Year Book, 8 Hen. 7, 5b; Callis on Sewers, 73, 74; Stat. of Sewers, 22 Hen. 8; Woolrych on Water Rights, 172; *Attorney-General v. Richards*, 2 Anstr. 603, 614; *R. v. Stanton*, 2 Show. 30; *Goodtitle v. Alker*, 1 Burr. 133; *Blundell v. Catterall*, 5 B. & Ald. 268, 296, 305; stat. 7 & 8 Geo. 4, c. 30, s. 12.) Even in ordinary cases, the liability of the parish does not extend to the making of the best road possible; but only to the doing of such repairs as will make the road as good as it has usually been at the best: (*R. v. Landulph*, 1 Moo. & Rob. 393, 394 n.)

MAULE, J.—The existence or non-existence of a road is a matter of physical observation. I remember trying a case on the Midland Circuit, where it appeared that some traces of a highway still existed; but then there were upon it quarries and trees a hundred years old; and the jury negatived the existence of the highway. In the present case there is no road to be seen.

R. Hall (*Cross* with him), for the Crown.—It is clear, upon this case, that there was once a highway to the sea; and so, indeed, there is still, though, by the subsidence of the cliff, a temporary interruption has taken place. What is required is to make good the slope of the cliff.

MAULE, J.—That would be a great engineering work. You

(b) After judgment had been delivered, *Cross* applied for an order for payment of the costs of the prosecution out of the highway rates for the parish, pursuant to s. 95 of 5 & 6 Will. 4, c. 50 (*R. v. Clarke*, 5 Q. B. 887; *R. v. Heanor*, 6 Q. B. 745, were referred to); but the court declined making any order as to the costs.

might almost as well call upon parishes to restore the roads which once probably existed over the Goodwin sands. The common law liability does not extend to cases of this sort; and, indeed, there can be no such thing as an absolute right against the act of God and the processes of nature.

Hall referred to Dugdale on Embankments, 90, and to a Commission temp. Rich. 2, relating to a great flood at Winchelsea: (Fitz. N. B. 127, D. E.)

JERVIS, C. J.—The case is quite clear. The road no longer exists, nor could it be restored without trespassing upon adjoining owners.

MAULE, J.—I am of the same opinion. Natural causes have destroyed the road which once existed; and the subject of repair no longer exists. Then not only the authorities cited, but common sense and the very form of the indictment, which alleges the existence of the road, establish that, there being no highway, there can be no liability to repair it. The facts found in this case are, that all that remains of the road is in good repair; and that to restore the impassable part would require considerable engineering works. Upon these facts, it appears to me that the defendants are entitled to our judgment.

WIGHTMAN, J.—This indictment alleges that there was and still is an ancient common Queen's highway leading to the sea; that a certain part of the said highway, describing it, is out of repair; and that the inhabitants ought to repair it; but the case finds that that part which is alleged to be out of repair, has been swept away by the sea; so that this is an indictment which requires the inhabitants to repair a road which has no existence.

The other judges concurred.

Conviction quashed.

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COURT OF CRIMINAL APPEAL.

February 4, 1854.

(Before LORD CAMPBELL, C. J., PARKE, B., MAULE, J.,
ALDERSON, B., COLERIDGE, J., WIGHTMAN, J., PLATT, B.,
WILLIAMS, J., MARTIN, B., and CROMPTON, J.)

REG. v. W. M. WATTS. (a)

Larceny—Chose in action—Unstamped agreement.

An unstamped agreement is within the rule of the common law, which prevents choses in action from being the subject of larceny.

So held (Parke, B., dissentiente), where, upon an indictment for stealing a piece of paper, it appeared that the paper stolen, though unstamped, contained the terms of a subsisting written agreement.

THE prisoner, William Mote Watts, was indicted at the Quarter Sessions for the North Riding of Yorkshire, on the 2nd of June, 1853, for stealing on the 3rd day of May, 1853, a piece of paper, the property of the prosecutor, Francis Patteson, and was convicted. The piece of paper found to have been stolen had written upon it when taken by the prisoner, as alleged in the indictment, an agreement between the prosecutor and the prisoner, signed by each of them. The agreement could not be produced, but secondary evidence of it was received, from which it appeared that the prisoner contracted thereby to build two cottages for the prosecutor, for a sum specified, according to certain plans and specifications, and the latter agreed to pay two instalments, being part of the price agreed on, at certain stages of the works, and the remainder on completion; and it was stipulated, that any alterations that might take place during the progress of the building should not affect the contract, but should be decided upon by the employer and employed, previous to such alterations taking place. Under this instrument the work was commenced and continued. At the time when it was stolen by the prisoner, as alleged, the work was going on under it; nevertheless it was proved at the trial that when the agreement was stolen the prisoner had been paid all the money which he was entitled to under it, although there was money owing to him for extras and alterations. The agreement was unstamped. The counsel for the prisoner objected at the close of the case for the prosecution, that, from the evidence it

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

was clear that at the time the piece of paper referred to in the indictment was taken by the prisoner, it was, in reality, a subsisting and valid agreement, and therefore not the subject of larceny (as a piece of paper only) at common law. The question for the opinion of the court is, whether, under the circumstances above stated, the prisoner could be lawfully convicted of feloniously stealing a piece of paper, as charged in the indictment. No judgment was passed on the prisoner, and he was discharged on recognizance of bail to appear and receive judgment when required.

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This case was before the court on the 12th November, 1853, and was sent back to be restated, and an alteration was made in it to the effect that the agreement was one which required a stamp.

Bliss, for the prisoner.—A chose in action not being the subject of larceny, this indictment could not have been sustained if the paper produced had been stamped; then does the want of stamp make any difference? It does not;—first, because the stamp laws do not apply to criminal cases.

LORD CAMPBELL, C. J.—That question is not open to you now. Whatever we might consider desirable, we are at present bound by the universal understanding and uniform decisions upon that subject. (a)

Bliss.—Then was the evidence admissible; and did it show that that which the prisoner was charged with stealing was a chose in action? It was clearly admissible for the purpose of showing what it was, viz., an unstamped agreement. Argument.

LORD CAMPBELL, C. J.—You need not dwell upon that; the main question is, whether it was a chose in action, although not stamped.

Bliss.—*Reed v. Deere* (7 B. & C. 261) is in point; because in that case a second unstamped agreement was looked at by the court, to see whether it altered the first. The distinction is between instruments which may, and those which cannot, be stamped after execution (*R. v. Bishop of Chester*, 1 Stra. 624); in the former case the stamp laws affect the admissibility of the instrument only; in the other case its validity. An unstamped agreement, therefore, is of value as a chose in action; and trover may be maintained for it: (*Scott v. Jones*, 4 Taunt. 865.)

PARKE, B.—So it might for a piece of paper, which was of value because capable of being converted into a valid agreement.

Bliss.—The want of stamp is only a disability arising at the time of the trial; and the giving up of an unstamped agreement is a sufficient consideration for a promise: (*Haigh v. Brookes*, 10 Ad. & E. 309.) (He also cited *Mann v. Lent*, 10 B. & C. 877; *Jackson v. Warwick*, 7 T. R. 121.) It is no plea to a declaration on an agreement that the agreement is unstamped (*Lazarus v. Cowie*, 3 Q. B. 459; *Bradley v. Bardsley*, 14 M. & W. 873); and if there is a written agreement, though unstamped, no other evidence of the right is admitted (*Brewer v. Palmer*, 3 Esp. 213);

(a) See *R. v. Gompertz*, 9 Q. B. 824, and cases there referred to.

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and that is because the unstamped agreement is the only evidence of it.

ALDERSON, B.—The reason of the rule which prevents a chose in action from being the subject of larceny is, that it is evidence of a right; and you cannot steal a right by taking away the evidence.

Price, for the prosecution.—First, this was not a chose in action at all; because whatever was due under the agreement had been paid: (2 BL 397.)

CROMPTON, J.—But the work was still going on.

MARTIN, B.—And an action might be maintained upon it for not building according to the specification.

Price.—Then the want of stamp prevents it from being a chose in action.

MAULE, J.—Strictly speaking a *chose in action* is an incorporeal right, and, of course, therefore, cannot be the subject of larceny; but the rule means that those instruments which are the evidence of a chose in action are not the subject of larceny.

Price.—When the objection is taken at *Nisi Prius*, it is enough to say that the proper evidence of the contract is not produced (*Jardine v. Payne*, 1 B. & Ad. 670); it is unnecessary to say that the unstamped paper is not a chose in action; but in truth it is not; because the stamp laws prevent any court from regarding it as an available security. If the prisoner had been indicted for stealing a valuable security, this unstamped agreement would not have proved it. In *R. v. Hart* (6 Car. & P. 106), the prisoner was indicted for stealing blank acceptances on unstamped paper, but it was held they were not within the statute, either as bills or orders for payment of money or securities for money; and the charge of stealing the stamps and paper was disposed of, on the ground that there was no sufficient taking. Other cases of imperfect securities were: *R. v. Perry*, 1 Car. & K. 725; 1 Cox Crim. Cas. 222; and *R. v. Vyse*, 1 Moo. C. C. 218. In *Perry's case*, the prisoner was charged with stealing a cheque,—described in another count as a piece of paper; and he was convicted on the latter count.

Argument.

ALDERSON, B.—Because the cheque was absolutely void, having been issued unstamped beyond the limited distance. It never could be made a good cheque.

Price.—The judges do not appear to have decided that the cheque was void; but to have thought that, whether it was so or not, the prisoner might be convicted of stealing the paper. *Vyses' case* is also like this; because there the things stolen were bank notes, which had been paid in London, and which one of the partners of the banking firm was carrying back into the country to be re-issued; and it was held, that they were properly described as unstamped pieces of paper for the purposes of the indictment, although some of the judges doubted whether they were or were not valuable securities. *R. v. Clark* (R. & Ry. 181), is to the same effect.

MAULE, J.—The notes were nothing but paper until re-issued,

because they derived their whole operation from being delivered to some one.

Price.—In a court of justice the writing upon the unstamped paper in the present case bound nobody.

MAULE, J.—It is the signature of the parties which binds.

Price.—Lastly, even assuming this unstamped agreement to be a *chose in action*, the prisoner is rightly convicted. All the writers on Criminal Law, in stating the rule that a *chose in action* is not the subject of larceny, refer to the Year Books (10 Edw. 4, 14 a; 49 Hen. 6, fo. 9, 10) as the authority upon which it rests. It appears, however, by reference to those books, that the ground of the rule was, that *choses in action* could not be valued, and at that time there was no felony unless the things stolen were of the value of twelve pence; but the law as to value being abolished *cessante ratione cessat lex*, there may be a difference as to title-deeds, which savour of the realty: (*R. v. Walker* (Ry. & M. 155.)) At all events, the thing stolen in this case was a piece of paper; and so the indictment is proved.

Bliss, in reply.—The general rule cannot be disputed.

LORD CAMPBELL, C.J.—We are all of that opinion that, except so far as the Legislature has interfered with it, the rule is, that documents which are the evidence of a *chose in action* are not the subject of larceny.

Bliss.—The cases cited are quite distinguishable. *R. v. Vyse* and *R. v. Clark* were cases of satisfied notes; but here there is no ground for saying that the agreement was at an end.

LORD CAMPBELL, C. J.—I am of opinion that this conviction Judgment is wrong. I think that the prisoner could not under the circumstances stated, be indicted for stealing a piece of paper. If the agreement had been stamped, it seems to be allowed notwithstanding the ingenious argument of Mr. Price, that an indictment for stealing a piece of paper could not be supported; because then it would be what is commonly called a *chose in action*, and by the common law larceny cannot be committed of a *chose in action*. Strictly speaking, the instrument of course is not a *chose in action*, but evidence of it, and the reason of the common law rule seems to be that stealing the evidence of the right does not interfere with the right itself; *jus non in tabulis*; the evidence may be taken but the right still remains. At all events, whatever be the reason of the rule, the common law is clear that for a *chose in action* larceny cannot be supported; and the legislature has repeatedly recognised that rule, by making special provision with regard to instruments, which are *choses in action*, and of which but for those enactments larceny could not be committed. As to this not being a *chose in action*, because all that was due had been paid upon it, it appears that the agreement is still executory, and might be used by either side to prove their rights. Then comes the objection as to its not being stamped; but though it is not stamped, I am of opinion that it is an agreement. There is a very clear distinction between instruments, which without a stamp

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are wholly void, and those which may be rendered available at any moment, by having a stamp impressed upon them. There are many cases in which an unstamped agreement is considered evidence of a right. When the question arises at *Nisi Prius*, as soon as it appears that the agreement was reduced into writing, parole evidence is excluded, because the written instrument is the proper and only evidence; and *Bradley v. Bardsley* (14 M. & W. 873) is strong to show that the court considers an unstamped agreement evidence of a right. To an action on an agreement a plea that it was not stamped is clearly bad, for the agreement may be stamped even pending the trial, and may then be given in evidence, as the stamping reflects back to the period of the making of the instrument. I agree that we must look at the state of the instrument at the time of the larceny committed; but it then had a potentiality of being rendered available, and it was evidence of an agreement; it was therefore evidence of a chose in action, and not the subject of larceny.

Judgment.

PARKE, B.—I am of opinion that the conviction is right. There is no doubt that at common law larceny cannot be committed of any instrument which is the evidence of a chose in action; but I think that when this instrument was stolen it was not evidence of a chose in action. Being unstamped, it was not available either in law or in equity, and by the operation of the Stamp Act could not be used for the purpose of showing a right. It was a piece of paper, and I differ from Lord Campbell in thinking that the potentiality of converting a chattel into evidence of a chose of action, is sufficient to prevent it from being the subject of larceny. Like the parchment on which a deed is written, and which is nothing but a piece of parchment until the instrument is perfected, this in its imperfect state was no evidence of an agreement, but was a piece of paper only. Where a plaintiff is prevented from given parole evidence of a written agreement, it is because he had the power of giving better evidence of it by getting the instrument stamped, and if he does not get it stamped, it is his own fault. If the instrument is lost and he cannot get it stamped, then still parole evidence of it is inadmissible. In the present case therefore, I think that that which was stolen, was merely a piece of paper capable of being converted, but not yet actually converted into a valid agreement, or the evidence of an agreement, and it is solely as evidence of an agreement that the common law would prevent it from being the subject of larceny.

ALDERSON, B.—I agree with Lord Campbell that this was an agreement at the time it was stolen. If the writing only becomes an agreement at the time when it is stamped, how is it that you may declare upon an unstamped agreement? If the agreement only dates from the stamping, the cause of action does not arise until the time of stamping, and, therefore, subsequently to the declaration. This seems to prove that the thing has existence as an agreement, though without a stamp it is not admissible in evidence. The reason why title-deeds and choses in action are not the subject

of larceny is, because the parchment is evidence of the title to land, and the written paper is evidence of a right; and, though the instrument is stolen, the right remains the same. It has, however, no existence in point of law, as a piece of paper or parchment merely, but is to be considered as part of the right or title; and the extent to which this is carried, appears from the passage in Lord Coke (3 Inst. 109), in which even the box containing the charters is treated as part of the title also. The paper becomes evidence of a right, and ceases to have any existence as anything else.

COLERIDGE, J.—I am of the same opinion with Lord Campbell and my brother Alderson. It is admitted that if this agreement had been stamped, it would not have supported a charge of stealing a piece of paper, a higher character having been given it, and its character as a piece of paper having been thereby absorbed; and, though unstamped, I think that is still the case. If the objection was taken at *Nisi Prius*, the judge would look at the paper to see what its character was; it would then appear to have written on it an agreement; and, but for the Stamp Act, it would be the evidence and the only evidence of the agreement; and even, though rendered inadmissible by that act, it has the effect of excluding all parol evidence of that contract. It is true that it is not in a condition in which it can be effectually sued upon; but it is capable of being rendered complete as evidence, by being stamped; and it would not acquire any new character by the stamping: it would still be the same evidence of a chose in action, rendered admissible in evidence by reason of the stamp. As soon as the instrument is signed, it becomes an agreement, and it is only because the stamp laws interfere that it is prevented from being used in evidence. The point is extremely subtle; and one regrets that the fate of parties in a court of justice should depend upon distinctions so nice; but upon the best consideration which I can give to the case, it seems to me that the conviction is wrong.

MAULE, J.—I am of the same opinion. I think, indeed everybody thinks, that this is an unstamped agreement; and if it is an agreement, it is not the subject of larceny. When one speaks of a piece of paper as being an agreement, it means that the paper is evidence of the right; and as a right cannot be the subject of larceny, neither is the paper which is evidence of it.

WIGHTMAN, J., and CRESSWELL, J., concurred.

PLATT, B.—I, also, am of the same opinion. If an action were brought upon this instrument, the declaration and all the pleadings would describe it as an agreement; and it becomes so, in my opinion, as soon as it is signed by both parties, though not available in evidence without the impression of a stamp. The mode of taking the objection at *Nisi Prius* proves the same thing. The witness is asked whether the agreement was not in writing; and when he answers "yes," and the instrument is produced, the judge looks at it, and finding it to be an agreement (because upon no other ground could he do so), rejects it for want of a stamp. It would surely be strange to hold that it was no agreement until it was stamped, when

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the necessity for a stamp arises from its being an agreement. According to that argument, if the instrument is stamped the prisoner must be acquitted; but if not stamped, convicted. But it seems to me that that would be to bring a man within the reach of the criminal law by a side wind, and a degree of subtlety consistent neither with law or justice.

WILLIAMS, J., and MARTIN, B., concurred.

CROMPTON, J.—I think there is sufficient proof that this was a subsisting agreement; and it wants stamping because it is an agreement.

Conviction reversed.

COURT OF CRIMINAL APPEAL.

January 28, 1854.

(Before JERVIS, C. J., MAULE, J., WIGHTMAN, J., PLATT, B.,
and WILLIAMS, J.)

REG. v. WALKER and MORROD. (a)

Larceny—Evidence—No case for the jury—Statement of one of two persons jointly indicted against the other.

On the same day on which A., a workman, left his master's service, his brother-in-law B., was found selling some of the master's property. A portion of it was usually kept in a place to which all the workmen might have access, and the rest in an inner place much less accessible; but to which A. frequently went for purposes connected with his employment. Two months before, B. had been employed as a labourer at the premises, and had had access to the outer but not to the inner place. When he sold the property he gave his name, and stated that he had received it from A.'s wife to sell. A. and B. were jointly indicted for stealing and receiving; and upon the trial, B. in his defence, repeated his former statement.

The question being reserved whether there was any evidence to go to the jury against A.:

Held that there was not.

THE prisoners were indicted at the East Riding of Yorkshire Sessions, held at Beverley, on the 3rd of January, 1854, for stealing 6 lbs. weight of brass from Mr. Crosskill, with a count in

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

the indictment for receiving. It was proved at the trial that Walker had worked for Mr. Crosskill and borne a good character for five or six years; that on the 9th of November he left Mr. Crosskill's employment. That on the 9th of November, Morrod, who was brother to Walker's wife, offered for sale in Beverley, 6 lbs weight of brass (being that charged in the indictment as being stolen from Mr. Crosskill's), and a quantity of white metal similar to block-tin. That the brass which was of a peculiar kind, and was in ingots cast in moulds belonging to Mr. Crosskill, was usually left in a shop, the door of which opened on to the road leading into Mr. Crosskill's works, to which workmen on the premises might have access, the door not being kept locked. That block-tin and white metal were only kept in the brass foundry within this outer shop, with a door between them. That Thomas Morrod was employed for one week on Mr. Crosskill's premises in September last, as a bricklayer's labourer, and that in such employment he would have to pass along the road into Mr. Crosskill's works, and might have access to the outer shop (where the metal called brass was kept), but had never been seen there; that he never had been seen in the brass foundry, and could not have gone in there without some of the workmen seeing him; that Walker was employed as an iron moulder at works on the other side of Mr. Crosskill's yard; that he frequently went into the brass foundry to borrow tools, and had at times borrowed white metal, saying that he wanted it for purposes of casting. Walker was apprehended in November at Wakefield. Morrod, when he sold the brass on the 9th of November, stated to the person to whom he sold it, that Walker's wife had given it to him to sell, and that Walker had left her and gone into the West Riding, which he also stated to the jury in his defence, telling them that he did not know but that it was honestly obtained. It was proved that he had given his name and address to the person to whom he sold the brass, and immediately he heard that it had been stolen from Mr. Crosskill's, had gone to see him about it. The chairman told the jury that they were not to take what Morrod said as to the way he obtained the brass as evidence against Walker, drawing their attention to the fact that it was easy for a man who had himself stolen it to invent such a story, and that it was, therefore, not fair to take such into account as evidence against the other prisoner. The jury believing that Walker had stolen the metal, and that Morrod had received it not knowing it to have been stolen, found Walker guilty of stealing, and acquitted Morrod.

Dearly, on behalf of Walker, objected that there was no evidence whatever to go to the jury of Walker having stolen the brass, and requested the chairman to reserve a case for the consideration of the Court of Criminal Appeal, and the case was therefore reserved upon this point. The jury were, probably, partly influenced in their finding by the facts which it was omitted to prove distinctly by the prosecution, but which were, nevertheless, apparent in the case, that Walker and his wife and her brother,

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Morrodd, lived in one house together, and that Walker had left Beverley on the 9th of November, and also by the general demeanour of the prisoner. It is also impossible that they should not give some weight to what Morrodd had said at different times as against Walker, believing, as they did, that he had sold the metal innocently, and was speaking the truth for himself.

Dearly, for the prisoner.

P. Thompson, for the prosecution.

JERVIS, C. J.—We are all clearly of opinion that there was no evidence at all against Walker, and that the case as against him ought not to have been submitted to the jury. The conviction must be quashed.

Conviction quashed.

COURT OF CRIMINAL APPEAL.

January 28, 1854.

(Before JERVIS, C. J., MAULE, J., WIGHTMAN, J., PLATT, B.,
and WILLIAMS, J.)

REG. v. SHARMAN. (a)

Forgery at common law—Uttering—Accomplishment of fraud.

The uttering of a forged testimonial of qualification as schoolmaster of parish school, knowing such testimonial to be forged, with intent to obtain the emoluments of the place of schoolmaster, and to deceive, is an offence at common law, although no fraud was actually perpetrated.

THE following case was reserved from the January Session of the Central Criminal Court by Baron Platt:—

John Sharman was tried at the last Session of the Central Criminal Court, before my brother Williams and myself, on an indictment which, after stating that at the time of committing the offences thereafter mentioned, the rector of the parish of Tinningley, in the county of York, was desirous of engaging a fit person to fill the place of schoolmaster of the parochial school of that parish, and that the said John Sharman had made application for the said place, and the rector had required from Sharman, for the purpose of satisfying him, the rector, testimonials as to the qualifications and character of Sharman, and as to his fitness for the said place of

(a) Reported by B. C. ROBINSON, Esq., Barrister-at-Law.

schoolmaster, charged that Sharman, intending by false, fraudulent, and deceitful representations to procure himself to be appointed to the said place of schoolmaster, falsely, knowingly, and deceitfully did make, forge, and counterfeit a certain writing to the likeness and similitude of and as and for a genuine writing of and under the hand of Henry Johnston, the rector of the parish of Lutterworth, in the county of Leicester, with intent, in so doing, to injure, prejudice, and deceive; which writing was as follows:—

“Gentlemen,—Mr. and Mrs. Sharman have been known to me for some years, and for some time they had the charge of a large school under my control and superintendence, which they conducted with great ability and success; indeed, committee, parents, and children were sorry when they resigned, and some of the latter presented them with small tokens of their esteem. I have, therefore, very great pleasure in bearing my testimony to their excellent moral character, and their suitability for the office of instructor to the rising generation, and can with confidence recommend them for the situation they seek, knowing them to be peculiarly adapted for the right management of children.

“W. H. JOHNSON.”

“12th November, 1853.”

The second and third counts charged the forgery more generally.

The fourth, fifth, and sixth counts (which otherwise corresponded with the first, second, and third respectively), charged Sharman with having uttered the forged writing, knowing it to be forged. The prosecutor proved the following facts:—On the 17th of December last the situation of schoolmaster of the parish school of Tinningley, in Yorkshire, was vacant, and Sharman had applied for it, and had sent in to the rector of that parish, papers purporting to be copies of certificates of character, and amongst them one purporting to be a copy of a testimonial from the Rev. Robert Henry Johnson, the rector of Lutterworth. On the day appointed for the production of the original testimonials, Sharman attended for that purpose in Parliament-street, Westminster, at the office of Mr. Baxter, a parliamentary agent, who had been authorized by the Rector of Tinningley to inspect and examine them. On that occasion, being required by Mr. Baxter to produce the original of the writing, purporting to be a copy of a testimonial from the Rector of Lutterworth, he produced the writing set forth in the indictment, and, in answer to Mr. Baxter's questions, falsely stated that it was the testimonial of the Rector of Lutterworth, and bore the rector's signature; in fact, the document had not been written or signed by the rector, but was altogether a forgery. The jury acquitted him of the forgery, but found him guilty of uttering the forged document, knowing it to be forged, with intent to obtain the endowments of the place of schoolmaster, and to deceive. Judgment has been postponed in order to obtain the opinion of the Court of Appeal, whether the act of which the jury have found Sharman guilty is an offence by the common law.

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No counsel appeared for the prisoner.

Clarkson (for the prosecution) submitted that the uttering such an instrument as the letter in question was the subject of indictment at common law. In *R. v. Toschak* (4 Cox Crim. Cas. 38), it was held that the forgery of a certificate to the Trinity House that the person named therein had served a certain number of years in certain vessels, &c., was a forgery at common law. It was laid down in 2 Russell on Crimes, 358, "that the counterfeiting any writing with a fraudulent intent, whereby another man may be prejudiced, is a forgery at common law." It was true the jury had not found specifically that the prisoner intended to defraud, but that he intended to obtain the endowments of the place of school-master and to deceive.

MAULE, J.—Surely there is an intention to defraud if it is intended that a person should act upon a representation whereby something would be obtained of him.

Clarkson.—Then arises the question whether the uttering of this document, the forgery of which is only a forgery at common law, is a criminal offence, no fraud having been actually perpetrated?

WILLIAMS, J.—*R. v. Boulton* (2 C. & K. 604), seems to throw some doubt upon this point.

JERVIS, C. J., delivered the judgment of the court as follows:—We are of opinion that it is an indictable offence at common law to utter a forged document, the forgery of which is an offence at common law.

Conviction affirmed.

Clarkson for the prosecution.

OXFORD CIRCUIT.

BERKSHIRE SPRING ASSIZES, 1853.

Reading, March 4.

(Before Mr. JUSTICE TALFOURD.)

REG. v. SMITH. (a)

False pretences—Evidence—Promissory notes of a bank that has stopped payment.

On an indictment for obtaining money by falsely pretending that the promissory note of a bank that has stopped payment by reason of bankruptcy, was a good and valuable security for the payment of the amount mentioned in it, and was of that value, it is not necessary to prove the

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

proceedings in bankruptcy. It is sufficient to prove the time when the bank stopped payment, and that cash could not be obtained for the note on its being presented for payment at the place where it was made payable.

Quære, whether the fact that a banker's note was more than six years old at the time goods or money was obtained by means of it, is of itself sufficient evidence that it was worthless.

THE prisoner, John Smith, was indicted for obtaining a pony by false pretences, and for a conspiracy to cheat.

The first count of the indictment alleged that the prisoner, on the 2nd of February, 1853, did falsely pretend to one John Holmes, servant to one John Berry, that a certain promissory note which he then and there produced and delivered to the said John Holmes, then was a good and valid valuable security for the payment of ten pounds, and of the value of ten pounds; whereas, in truth and in fact, the said promissory note then was not a good and valid valuable security for the payment of ten pounds, and of the value of ten pounds, as he the said John Smith then well knew; by means of which said false pretences the said John Smith, then and there (to wit), on the same day, and in the year aforesaid, at, &c., unlawfully, knowingly, and designedly did obtain of and from the said John Holmes, one mare, of the goods and chattels of the said John Berry, with intent to cheat and defraud, &c.

In the second count, the note was described as a certain paper writing purporting to be a promissory note for the payment of ten pounds, and alleged the false pretence to be that it was a good, valid, available, and negotiable promissory note, and valuable security for the sum of ten pounds, and of the value of ten pounds,

In the third count it was described as a certain paper writing purporting to be a promissory note for the payment of ten pounds to the bearer, on demand, and the false pretence alleged was, that it was a good, valid, available, and negotiable promissory note, and valuable security for the sum of ten pounds, and of the value of ten pounds, and that the said sum of ten pounds would be paid to the said John Holmes, or the bearer of the said promissory note, on presentation thereof at the bank of Messrs. Glyn, Halifax, Mills, and Company, bankers, London, or at the bank of Thomas Johnson, William Johnson, and C. Main, at Romford.

The fourth count, charged a conspiracy by the defendant and a certain other person, unknown, to obtain from the said John Holmes, a certain mare, the property of John Berry, but then in the custody, care, and keeping of the said John Holmes.

In a fifth count, the conspiracy was charged to be, to obtain the mare from John Berry, and to cheat and defraud him of the same.

Hunt for the prosecution.

J. O. Griffiths for the prisoner.

It appeared by the evidence of Holmes that while exhibiting his master's pony in Reading Fair, on the 2nd of February last, he was accosted by the prisoner, who bid him 10*l.* for it,

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which was refused. Shortly afterwards another man, apparently unconnected with the prisoner, came up to bargain for the pony and made a bid of 7*l.*, which was also refused, and the man went away. The prisoner then again came up and renewed his offer, which was accepted by Holmes; the prisoner promising to pay the 10*l.* on delivery of the pony. The parties then went to a booth in the fair to complete the sale, when Holmes told the prisoner, that he could not have the pony without the money. The prisoner then produced three notes, and taking out one of them, a 10*l.* note on "The Romford Bank," tendered it to Holmes, who asked if it was good. The prisoner replied that it was "as good as gold," and that he might have two 5*l.* notes instead, if he liked. Holmes took the 10*l.*, and delivered up the pony, which was taken off by the prisoner and the other man, who had come up during the transaction. Holmes took the note to Simmonds' Bank, in Reading: they were refused to be cashed. In consequence of the reasons given at the bank for that refusal, Holmes then looked for the prisoner, but not seeing him, questioned the supposed confederate, whom he met. This person then ran away, pursued by Holmes, whose master coming up, assisted in capturing this man, who then offered to return the pony if the prosecutor would not send for the police; and taking him down to an inn, delivered up the pony. He then offered to give the prosecutor his watch if he would give him up the 10*l.* note. The prisoner was shortly afterwards given into custody, and on his person were found only sevenpence in copper. Under the archway where the confederate had been stopped were found within half-an-hour two 5*l.* notes, which were identified by Holmes as the two which the prisoner had offered to exchange for the 10*l.* note. One of these was also on "The Romford Bank," and the other on "The Winchcombe Bank," and dated in the year 1816. The 10*l.* note of "The Romford Bank," delivered by the prisoner to Holmes, was dated in 1840, and purported to be payable on demand, where it was issued, or at Messrs. Glyn and Co., bankers, London.

The cashier of the Romford Bank proved that the 10*l.* note and the 5*l.* note were genuine notes, but that the bank had stopped payment in 1844, and had not issued any notes since.

A policeman was called to prove the presentation of the two notes at Messrs. Glyn and Co., and the following questions were put:—"Did you present these notes at Messrs. Glyn's for payment?" "Yes."

"Did you succeed in getting them cashed there?" "No."

Similar evidence was also adduced of the presentation of the 5*l.* note of the Winchcombe Bank.

Griffiths then objected that there was no evidence to go to the jury; that the 10*l.* note was valueless. It was proved that it was a genuine note, and there was no evidence of the bankruptcy of the makers, which, he contended, must be strictly proved by the proceedings in bankruptcy.

TALFOURD, J., was of opinion that it was unnecessary to

adduce any formal proof of the bankruptcy, and that the evidence of the worthlessness of the note was sufficient to lay before the jury.

At the request of the counsel for the prosecution the learned judge said he would consider whether he would reserve the point.

Griffitts then addressed the jury for the prisoner, contending that there was no proof that the prisoner knew that the note was bad.

The prisoner was convicted, and thereupon sentenced to six months' imprisonment.

At Oxford, on the following day,

TALFOURD, J., said, I have consulted my brother Williams with reference to the case of John Smith, tried before me, at Reading yesterday, on a charge of obtaining a pony by means of a note of a bank which had stopped payment, and that learned judge agrees with me, that there is no ground whatever for granting a case, for the evidence was quite sufficient without proof of the bankruptcy. On another ground it appears to me that the note was worthless. It was more than six years old, and therefore no action could be maintained upon it.

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[Until this case, the amount and nature of the requisite proof of the worthlessness of notes of banks that have stopped payment, where money had been fraudulently obtained by means of them, had not been determined. In two cases indeed, it had been decided that the evidence adduced was insufficient. In *Rea v. Flint, Russell, and Ryan*, 460, the notes on their face appeared to have been exhibited under a commission of bankruptcy against the bankers; the words importing the memorandum of exhibit, had been attempted to be obliterated; but the names of the commissioners remained on each of them. A witness was also called who stated that he recollected the bank stopping payment upwards of seven years before, but he added that he knew nothing but what he saw in the papers, and heard from people who had bills there. It appeared that the particular notes, the subject of the indictment, had not been presented at the place where they were issued, or at the London bankers, where they were made payable. It was held by all the judges that the evidence was defective in not sufficiently proving that the notes were bad. In *Rea v. Spencer* (3 C. & P. 420), it was proved that the prisoner had been told the bank had stopped payment, and it was shown that the banking house was shut up, and that two of the partners had become bankrupts, but it appeared on cross-examination that a third partner had not become bankrupt. Mr. Justice Gaselee directed an acquittal, on the ground, that as it appeared the note might be ultimately paid, he could not hold that the prisoner was guilty of a fraud in passing it away. This case can hardly be upheld at the present day. It is to be observed, however, that the indictment did not allege as a pretence, that the note was then of the value appearing on its face, or that it was a valuable security, but merely that it was a good and available note of the firm.

With respect to the opinion expressed by the learned judge in the case in the text, that the date of the note was sufficient evidence of its worthlessness, it must be observed that this, in a great measure, depends upon whether the Statute of Limitations runs from the date of a banker's re-issuable note. It is submitted that it does not, although there does not appear to be any case in which this point has been decided. Mr. Serjeant Byles, in his Treatise on Bills of Exchange, says (6th Edit. p. 272), "It is conceived that if the statute have run out against the holder of a bill or note, payable at a day certain, and he then transfers it, the transferee's right of action is barred. For he, as transferee of an overdue bill, can stand in no better situation than his transferee. He, like his transferee, has a debt, but has not the right of action, and has notice of the loss;" but he adds, in a note to this passage, "It may be otherwise with a bill or note payable on demand; a banker's re-issuable note for example." And again at p. 273, after stating in the text that on a bill or note payable on demand, the statute runs from the date of the instrument, and not from the time of the demand, he adds in a note, "*Quære tamen*, if the note be a re-issuable one, and re-issued, or if it be payable at a particular place."—J.E.D.]

OXFORD CIRCUIT.

BERKSHIRE SPRING ASSIZES, 1853.

Reading, March 3.

(Before Mr. JUSTICE TALFOURD.)

REG. v. GOODE. (a)

Concealment of birth—Disposal of the body.

On an indictment against the mother for the murder of her illegitimate child, it appeared that the body of the child was found, a few hours after its birth, on the floor of an attic in a house where the prisoner lived as domestic servant, the head severed from the body, and both lying in sheets which had been removed from the bed-room below, which was occupied by the prisoner and her mistress, and where there was evidence to show that the birth had taken place, but it was doubtful whether the severance of the head from the body was effected there or in the attic :

Held, that there was no evidence to warrant the jury in finding a verdict for the statutable misdemeanor of endeavouring to conceal the birth.

THE prisoner, Anne Goode, was indicted for the wilful murder of her illegitimate child, at Wallingford, on the 10th of September, 1852.

Skinner, for the prosecution.

J. J. Williams, for the defence.

The prisoner was a servant in the family of Mrs. Winmill, of Wallingford. On the morning of the 10th of September she appeared to be very ill, and her mistress sent for a surgeon. In the meantime the prisoner went up stairs, and when she came down she fell into a chair in a state of insensibility, and was so found by the surgeon. On examining the bedroom where she slept, which was also the room where her mistress slept, blood was observed on the floor ; and in an attic above, the dead body of a male child was found on the floor wrapped in bed sheets, which had been removed from the room below. The head of the child was separated from the body, and a table knife was lying on the floor near it. According to the medical evidence the child had not been born more than two hours, and there was no doubt of its having been born alive. The prisoner stated, immediately after the discovery of the body

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

of the child, that it was dead, and she cut off its head. The prisoner had not been suspected of pregnancy, and it appeared from her youth and inexperience that she might have been herself unconscious of the fact. Although it was proved that the knife was usually kept in the kitchen, it appeared that it might, at the time of its use, have been lying in the attic. The sheets, with the body, were found in the middle of the room. At the close of the case for the prosecution, some discussion took place as to whether there was any evidence of an endeavour to conceal the birth of the child within the statute of 9 Geo. 4, c. 31, s. 14.

Williams wishing to have the learned judge's opinion on that point before addressing the jury on the capital charge,

TALFOURD, J., said this was not a case of concealment in his opinion.

Williams then addressed the jury for the prisoner on the charge of murder, contending that the prisoner was unconscious at the time.

Verdict—Not guilty.

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—
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OXFORD CIRCUIT.

WORCESTERSHIRE SPRING ASSIZES, 1853.

Worcester, March 11.

(Before Mr. JUSTICE VAUGHAN WILLIAMS.)

REG. v. NISBETT. (a)

Forgery—Fictitious person—False description—Evidence of other utterings to prove guilty knowledge.

Putting off a bill of exchange of A., an existing person, as the bill of exchange of A., a fictitious person, is a felonious uttering of the bill of a fictitious drawer.

Where N. uttered a bill of exchange purporting to be drawn by M., and at the time of the uttering represented M. to be a clerk at a railway station, and there was evidence to show that M. had authorized the use of his name as drawer of the bill, but that the prisoner knew that M. was not then, although he formerly had been, a clerk at a railway station :

Held, that there was evidence from which the jury might find that the prisoner uttered the name of M. as the name of a fictitious person, so as to support a charge of feloniously uttering the bill, knowing it to be forged.

Held, also, that statements made by the prisoner with reference to M. on a previous occasion when he applied to get a bill discounted, were admissible in evidence.

JAMES NISBETT, clerk, was indicted for forging a bill of exchange for the sum of 300*l.*, with intent to defraud ; and in the second count, with uttering the same bill, knowing it to be forged. In a third count, the prisoner was charged with forging the acceptance in these words, " Accepted ; William Robert Nisbett : payable at Messrs. Scott and Co., bankers, Cavendish-square, London," with intent to defraud ; and in a fourth count, with uttering the acceptance, knowing it to be forged. From the evidence of the prosecutor, Mr. W. S. P. Hughes, a solicitor at Worcester, it appeared that, in the month of February or March, 1851, the prisoner, who was then curate of Cleobury Mortimer, in Shropshire, came to him, and said he was in want of a temporary

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

loan of 300*l.*, having been disappointed by his bankers, and produced the following bill of exchange :—

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“ London, March 1st, 1851.

“ £300. Six months after date pay to the Rev. James Nisbett, or order, the sum of three hundred pounds for value received.

“ RICHARD MITCHELL.

“ To William Robert Nisbett,

Fort Nisbett,

Barrell-a-Bane, Ireland.”

“ Accepted; William Robert Nisbett: payable at Messrs. Scott and Co., bankers, Cavendish-square, London.”

The bill bore the prisoner's indorsement on the back. On the prosecutor inquiring who the parties to the bill were, the prisoner said, one was his brother, who was his tenant in Ireland; the other was Mr. Mitchell, a clerk in the goods department at Nine Elms station. The witness wrote in pencil on the bill the address of the drawer, and gave the prisoner an order on his London agent for 255*l.*, retaining 45*l.* for discount. The bill was dishonoured when due, and the prosecutor went to London and made inquiries at the Nine Elms station, but could not find any such person as Richard Mitchell there.

Mr. Philip Philemon Newman, superintendent of the goods department at the Nine Elms station in 1851, proved that no clerk of the name of Mitchell was employed there between September, 1847, and November, 1851, when the witness ceased to fill the office of goods superintendent, and became waggon master and travelling inspector.

Huddleston (for the prosecution), now proposed to give evidence of other utterings of forged bills of exchange to persons named Stallard, Rea, and others.

G. Browne (for the prisoner), objected that no other offence than that charged could be given in evidence: (*Reg. v. Oddy*, 2 Denison's Crown Cases, 264.) There it was held, by the Court of Criminal Appeal, that, on the trial of an indictment containing counts for stealing, and for receiving the property of A., knowing it to be stolen, evidence of the possession, by the prisoner, of other property stolen from other persons at other times, is not admissible to prove either the stealing or the receiving.

Huddleston, contra, referred to the opinion of Cresswell, J., in *Reg. v. Green* (3 Car. & Kir. 209), shewing that *Reg. v. Oddy* did not apply to cases of other utterings. And in *Wylie's case* (1 Bosanquet and Puller's New Rep. 92; 2 Leach, 983), it was expressly held that, to prove the guilty knowledge of an utterer of a forged bank note, evidence may be given of his having previously uttered other forged notes, knowing them to be forged.

WILLIAMS, J., thought the evidence proposed to be given was admissible, and therefore he should receive it.

A witness was then examined, who stated that the prisoner had

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produced a bill to him for the purpose of getting it discounted, but it appeared that this bill (which was not produced, but secondary evidence given of its contents, the prisoner having had notice to produce it) did not contain the name of Mitchell.

Browne objected that the bill was not between the same parties, and could not be any evidence of the prisoner's knowledge of the forgery of Mitchell's name, which was the ground upon which the admissibility of the present evidence rested.

WILLIAMS, J., said he would receive the evidence, but he should certainly reserve the point; upon which the counsel for the prosecution declined to offer the evidence, and proceeded to give evidence of another bill containing the name of Mitchell as drawer, and respecting whom the prisoner made a statement.

Browne again objected that any statement made by the prisoner on that occasion was too remote from the issue, and relied on *Phillips' case* (1 Lewin's Crown Cas. 105.) There the prisoner was indicted for uttering a forged 5*l.* note, and it appeared that, on a former occasion, he had paid away a 5*l.* note; and that the person to whom he paid it, afterwards examining the note, sent for the prisoner, who came and offered gold in exchange for it, but the note having been previously taken possession of by the constable, he left the money for it, and went away; and the constable, finding the matter had been settled, subsequently destroyed the note. There Mr. Justice Bayley expressed a strong doubt whether these facts were admissible, no evidence having been given of the note being a forged note, and the note itself not being produced. And he subsequently expressed an opinion that the prosecutor could not give in evidence anything that was said by the prisoner at a time collateral to a former uttering, in order to show that what he said at the time of such former uttering was false, because the prisoner could not be prepared to answer or explain evidence of that description. That the prisoner is called upon to answer all the circumstances of a case under consideration, but not the circumstances of a case which is not under consideration; that the prosecutor is at liberty to show other cases of the prisoner having uttered forged notes, and likewise his conduct at the time of uttering them; but that what he said or did, at another time collateral to such other utterings, could not be given in evidence, as it was impossible that the prisoner could be prepared to combat it. In this case it was not shown that this former bill was a forgery.

WILLIAMS, J., thought that the evidence was admissible, and that the jury might infer from the use of Mitchell's name that the transaction was connected with the present charge.

Mr. R. T. Rea, a solicitor, was examined for this purpose.—He stated that the prisoner came to him in the spring of 1851, and asked him to discount a bill for him for 300*l.*, and produced a bill. Witness asked who Mitchell was? The prisoner replied, that he was a clerk holding a responsible and lucrative situation in the goods department at the Nine Elms station. With respect to Nisbett (the other person named in the bill), the prisoner said that

he did not think he was exactly a responsible person, whereupon the witness declined further negotiation in the matter.

This was the case for the prosecution.

On the part of the prisoner, Robert Mitchell was called.—He said that the prisoner had married his (witness's) sister. He was now clerk to a barrister; but in 1843 was a clerk at the Nine Elms station. The prisoner, whom he had known for fifteen or sixteen years, had seen the witness at the station, and they met from time to time after. In 1850 witness dined with the prisoner at the Freemason's Tavern; and while there, the prisoner asked him if he would permit his name as usual to appear on his (the prisoner's) bills, witness having previously given him permission to use his name, and the prisoner at the same time produced some bills with witness's name upon them, and at last witness consented that his name should be used as drawer. The witness also stated that he had withdrawn his previous authority in 1849, but renewed it on this occasion. On cross-examination, the witness admitted that the prisoner must have known, in 1850, that he had left the Nine Elms station.

Robert Meade Nisbett, the prisoner's brother, proved that Robert Mitchell was clerk at the Nine Elms station in 1842 or 1843, since which time the witness had not seen him. On cross-examination, this witness said that William Robert Nisbett, whose name appeared on the bill as acceptor, was his brother, and who went to America in 1850, and the handwriting was not his, but was like the prisoner's.

Huddleston, in replying to this evidence, referred to the case of *Reg. v. Blenkinsop* (1 Den. C. C. 276), where the prisoner, as in the present case, had defrauded people by false representations. It was shown that he had obtained the name of a labourer named Wilkinson, as the drawer of bills, and then used it as that of a gentleman at Halifax of the same name. He was convicted of forgery, and after the case had been reserved the conviction was pronounced good, and Blenkinsop was transported. Nisbett knew well at the time of using Mitchell's name that he was unable from poverty to become amenable for the bills, and with respect to the acceptor, the forgery was equally evident, because Mr. Robert Meade Nisbett had stated that his brother left for America in 1850, and here they had that brother's signature to a bill in 1851.

WILLIAMS, J., before summing up, having expressed a wish to hear the argument of the counsel for the prisoner with reference to the meaning of a "fictitious person,"

Browne contended that, although the prisoner might have fraudulently represented that Mitchell was a clerk at Nine Elms station at a time when he was not one, the offence did not amount to forgery; and that Mitchell being an existing person, the mere false description of him was not forgery: (*Reg. v. Webb, Russell & Ryan*, 405.) There the prisoner uttered a bill addressed to Thomas Bowden, baize manufacturer, Romford, Essex, and accepted "Thomas Bowden, payable at No. 40, Castle-street, Holborn;" and there was evidence to show that although there was a person of that name, and that the acceptance was in his hand-

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writing, he did not answer the description in the bill; and that there was no person answering such description; it was held that, assuming the acceptance to be the handwriting of Bowden, the adoption by the prisoner of the false description and addition was not a forgery, or an uttering of a forged bill, no false name being assumed, and there being no person answering the description or addition given. *Blenkinsop's case* confirmed and recognised that case, and was not an authority for the position contended for by the prosecution; for there the prisoner had put off the acceptance of one William Wilkinson, of Leeds, as the acceptance of William Wilkinson, of Halifax, another existing person. In the present case, according to the evidence, the prisoner had the authority of Mitchell to use his name, and all that the prisoner did was to represent verbally the same person as being a clerk at the station; and even if the jury believed that the prisoner knew that representation to be untrue, it did not amount to forgery.

WILLIAMS, J., in summing up, said that if the prisoner used the names of either the acceptor or the drawer without his authority, he was undoubtedly guilty of forgery. But a further question arose here with respect to the drawer, whether, supposing the prisoner had authority to use his brother-in-law (Mitchell's) name, he used it as his name, or as the name of another person who did not in fact exist. Then referring to the arguments of the counsel as to what constituted a "fictitious" person, the learned judge said that if a representation were made that an individual was worth 1,000*l.*, in order to obtain advances such as Mr. Hughes had made, and it should turn out that the person was not worth ten shillings, it would not be maintained that the person so represented was fictitious, as he was really in existence; but in the present case it was for the jury to say whether the prisoner had tendered the bill with a knowledge that there was no such person there, and if they were of that opinion, and that the prisoner tendered the bill as that of a person who did not in fact exist, then the charge of forgery was in his opinion sustained. Again, did the jury believe that the prisoner had forged the name of his brother? After reading the evidence, the learned judge wrote down the following questions for the consideration of the jury: 1st. Do you believe that the prisoner forged the acceptor's name with intent to defraud? 2nd. Did he utter the bill, knowing it to be forged? 3rd. Did he forge the name of the drawer with a felonious intent? Did he forge the name of the drawer as a fictitious person? Mr. Justice Williams intimated that if the jury found the prisoner guilty only on the last point submitted to them, he should reserve the case for the opinion of the court above.

The jury having answered all the questions submitted to them in the affirmative, and found the prisoner guilty, he was sentenced to ten years' transportation.

[This case is one of considerable importance, as it carries the law on the subject of forgery and uttering, a step beyond the previous decisions. Although it had been determined that to add an address so as to put off the genuine acceptance of an existing person, as the acceptance of a different existing person, is forgery (*Reg. v. Blenkinsop*, 1 Den. C. C. 276), it had not

been decided that to put off the genuine acceptance of an existing person, as the acceptance of a person in different circumstances, amounts to an acceptance of a fictitious drawer so as to constitute a felonious uttering. Indeed the case in the text does appear to conflict with *Webb's case* (Russell & Ryan), cited in the argument. The present case must be considered as if the witness Mitchell had in fact either himself drawn the bill or authorized the prisoner to do so, and that the prisoner uttered the bill or wrote the name of the drawer, not as Robert Mitchell, a clerk to a barrister, but as Robert Mitchell a clerk at the Nine Elms Station, a non-existing person. Now in *Webb's case* the bill was drawn upon Thomas Bowden, haize manufacturer, Romford, Essex, and the acceptance was by Thomas Bowden, but not by Thomas Bowden of Romford, there being no person of that name in fact, carrying on business at Romford; and the question raised was whether, assuming the acceptance was the handwriting of Bowden, the issuing the bill with the false description was a felonious uttering, and the majority of the judges thought "that the adopting a false description and addition, where a false name was not assumed, and where there was no person answering the description or addition, was not a forgery." It is not sought to controvert this position, but it may be observed that in arriving at it, the judges seem to have avoided the real question before them, which was whether there was not in fact the assumption of a false or fictitious name by Webb, which was the question submitted by Mr. Justice Williams to the jury in the case in the text, and which the jury in *Webb's case* must be considered as having also found in the affirmative. The question appears to be one for the jury, aye or no did the prisoner when he uttered the bill utter it as the bill or acceptance of the person who in fact drew or accepted it, or did he utter it as the bill or acceptance of another person who had or had not any existence? If he uttered it as the bill or acceptance of the person who was in fact the drawer or acceptor, and his offence was merely misrepresenting or mistaking that person's circumstances and position, in the words of *Webb's case*, "adopting a false description and addition," he is not guilty of a felony, but is still liable to be punished for a misdemeanor if he obtained money by means of that misrepresentation; but if on the other hand he passed off the genuine bill or acceptance of one A. B. as that of another and different A. B., with intent to defraud, he is guilty.

This distinction may be illustrated by supposing in the case in the text, that the prosecutor had formerly known Robert Mitchell, when a clerk at Nine Elms, and discounted the bill, believing that he continued to hold that office, then the mere false representation by the prisoner that Robert Mitchell was a clerk would not be a felony, because of course for the purpose of this point, that which the jury negatived must, as already stated, be assumed to be true, viz., that the prisoner was authorized by Mitchell to use his name, and did not forge it. This distinction may be difficult for juries to appreciate, but it seems to be the sound one, and upon it all the cases are reconcilable, the only objection to Webb's case being the inference of fact drawn by the judges, and not the rule laid down by them.—J. E. D.]

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WORCESTERSHIRE SPRING ASSIZES, 1853.

Worcester, March 12.

(Before Mr. JUSTICE VAUGHAN WILLIAMS.)

REG. v. DAVIES. (a)

Insanity—Mode of procedure where the prisoner, on being called upon to plead, stands mute, and exhibits symptoms of insanity—Stat. 39 & 40 Geo. 3, c. 94, s. 2.

Where a prisoner, on being called upon to plead, stands mute, and exhibits symptoms of insanity, but which the counsel for the prosecution is instructed are feigned, and a jury is impanelled under the provisions of the stat. 39 & 40 Geo. 3, c. 94, s. 2, to try his sanity, it is the duty of the prosecution to lay evidence before the jury from which the court may collect the truth of the matter, and then the counsel for the prisoner may call witnesses to rebut any inference of art and design.

If the prosecution does not adduce such evidence, the judge will endeavour to ascertain the truth by examining the officers of the prison, or will postpone the trial, independently of the statute, until the next assizes.

Where, in a case of a father and son jointly indicted for murder, the father appeared to be insane, but there was a doubt expressed by the prosecution as to its reality, the judge examined the gaoler and the medical attendants in his private room, and the evidence being conflicting, a jury was impanelled to try the prisoner's sanity, and the prosecution adduced conflicting evidence, upon which the prisoner's counsel addressed the jury, who found that the prisoner was then insane, and thereupon he was ordered to be detained in custody during Her Majesty's pleasure, and the younger prisoner was liberated upon bail.

DAVID DAVIES, the elder, and David Davies the younger, were indicted for the murder of Mary Pardoe, on the 9th of August, at Old Swinford.

The elder prisoner, on coming to the bar, conducted himself in a strange manner, and, on being called on to plead, at first remained silent, but on the question being repeated to him through the medium of the governor of the gaol, he said in a hurried voice, "I have not killed anybody; they didn't come to fight; I was to fight, but I haven't seen them yet." The younger prisoner pleaded "not guilty."

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

Allen, Serjt., for the prosecution (*Powell* with him), said, that as the prisoner must be presumed to be capable of pleading, a plea must be entered for him as if he stood wilfully mute. If it was alleged that the prisoner was insane, it would be on the counsel for the prisoner to commence, and prove the affirmative of the issue that he is not capable of pleading.

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Huddleston, for the prisoner, submitted that the counsel for the prosecution was mistaken, and that the proper course would be for a jury to be sworn to try whether the prisoner was or was not fit to take his trial. The statute 39 & 40 Geo. 3, c. 94, s. 2, provides, that "if any person indicted for any offence be insane, and upon arraignment shall be found so to be by a jury lawfully impanelled for that purpose, so that such person cannot be tried upon such indictment, or if upon the trial of any person so indicted, he shall appear to the jury charged with such indictment to be insane, it shall be lawful to the court before whom any such person shall be brought to be arraigned or tried as aforesaid, to direct such finding to be recorded, and thereupon to order such person to be kept in strict custody till his Majesty's pleasure should be known." In *Reg. v. Goode* (7 A. & E. 536 cited in 1 Russell on Crimes, by Greaves, p. 16), where a person indicted for a misdemeanor in uttering seditious words, upon his arraignment showed symptoms of insanity, it was held that the jury might form their judgment upon his demeanour, while the inquest was being taken, and that it was unnecessary to cross-examine the witnesses, as that would be a useless prolongation of a painful proceeding. *Reg. v. Pritchard* (7 C. & P. 303), was also in point. There the jury found that the prisoner, who was deaf and dumb, was able to plead, and they so found from the prisoner's conduct in the dock, for on the indictment being given to him, he read it, and made signs that he was not guilty; but in that case evidence was afterwards adduced by the prosecution to show that the prisoner was insane, and the jury so found. The question to be decided now is not one that the prisoner, or his friends, would come prepared to answer. It is not what the state of mind of the prisoner was when the alleged offence was committed, but what the state of his mind is now? it is whether he is in a fit state to plead or not?

WILLIAMS, J.—If the prosecution does not bring proof of his state of mind, I must endeavour to ascertain it as well as I can from the officers of the prison. It is desirable to know whether the prisoner is insane, or only feigning insanity; and whether, supposing him to be insane, his mental disease is of a temporary or permanent character. It may be that the prisoner was sane at the time when the offence was committed, but that the apprehension of being brought here has excited a temporary paroxysm of mental derangement; and if the jury were impanelled to investigate his state of mind, the result of their inquiry might preclude the necessity of any further proceedings. I think the most desirable course to pursue is, that the gaoler be examined in my private room, and medical evidence procured, to be heard out of court

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in the first instance, and then if it is deemed improper to put the prisoner on his trial now, I can postpone the trial until the next assizes, which will afford time for ascertaining the real state of his mind.

The surgeon of the gaol, and Dr. Malden, a physician, were then sent for, and the judge and counsel retired to the judge's private room.

At a subsequent period of the day, the elder prisoner was again placed at the bar, and called upon to plead. Upon his standing mute, the learned judge directed the jury to be sworn, to try the state of his mind. The jurors then in the box were accordingly sworn to try whether David Davies the elder was then of sound mind, and fit to take his trial, or not.

Allen, Serjt., addressed the jury for the prosecution, stating the issue they had to try, and then proceeded to examine medical witnesses, and officers of the gaol. Their testimony differed; some thinking that the prisoner was really insane, while Dr. Malden believed the appearances were feigned.

Huddleston addressed the jury for the prisoner.

WILLIAMS, J., in summing up, observed that, while on the one hand it would be a serious thing to put a man on his trial, when incapable of properly instructing his counsel for his defence, yet on the other hand, the jury should carefully guard against giving prisoners the opportunity, by simulating madness, to pervert the course of justice even for a single day. After going through the evidence, the learned judge directed the jury that, as it would not be possible to prevent their founding a judgment for themselves upon the appearance and behaviour of the prisoner, neither was it unlawful for them to do so, but the contrary.

The jury found that the prisoner was then insane, and he was thereupon ordered to be detained in custody during Her Majesty's pleasure.

The younger prisoner, upon the application of *Rupert Kettle*, his counsel, was discharged upon bail.

OXFORD CIRCUIT.

STAFFORDSHIRE SPRING ASSIZES, 1853.

Stafford, March 16.

(Before Mr. JUSTICE VAUGHAN WILLIAMS.)

LEIGH v. COLE. (a)

*Right of constables to search and handcuff persons in custody for breaches of the peace.**The right of searching persons in custody must depend on the circumstances of each particular case; and the mere fact of a person being drunk and disorderly will not justify a police officer searching his person, although the officer may have received general orders to search all persons in custody; but any person, whatever may be the nature of the charge, may so conduct himself, by reason of violence of language or conduct, that it may be prudent and right to search him, as well for his own protection as for those intrusted with the duty.**The same rule applies to handcuffing persons in custody, and the right must depend on the circumstances of each particular case, as, for instance, the nature of the charge, and the conduct and temper of the person in custody. There cannot be any general rule that will justify a constable in resorting to the extreme measure of handcuffing a person in custody for a misdemeanor to a felon, and marching them through the public streets from the police station to the magistrate's office.*

THE declaration alleged that the defendant, on the 31st of August, 1852, assaulted and beat the plaintiff, and did thereby break his jawbone; and further, that the defendant unlawfully imprisoned the plaintiff, and forced him to go handcuffed through the streets from Hanley to Shelton, and did unlawfully search the plaintiff's clothes.

Pleas.—First, not guilty by statute; secondly, that no sufficient notice of action had been given.

The case for the plaintiff, a sawyer, at Shelton, was that he was going, on the night in question, from the Black Horse public-house to the Fair Head beer-house, when he was met by the defendant, who was the superintendent of police for the district. After some words had passed between them, the defendant seized

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

[Although this is a civil case, it will be seen that it is a case of very great importance with reference to the administration of the Criminal Law.—J.E.D.]

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the plaintiff by the collar and took him to the station-house. By the defendant's direction, a police-constable searched him, and a tobacco-box and a piece of paper, all that he had with him, were taken from him. The defendant afterwards laid hands on him, beat him violently, and gave him a blow which broke his jaw-bone. The plaintiff was locked up in the cell with a person charged with felony, and the next morning was taken, handcuffed to the felon, before the magistrates, and fined five shillings and costs for being drunk.

Keating, Q.C., in stating the case, contended that, although a man might be apprehended for being drunk, a police officer was not entitled to search him. The defendant would perhaps say he acted under orders; but if those orders were illegal, he could not protect himself on that ground. He submitted that the search of persons when taken into custody could not be made the subject of a general rule. The search of a prisoner must depend upon the peculiar circumstances of each particular case. A constable was, doubtless, empowered to do everything to secure the object to be gained in taking a party into custody; he was entitled to do everything reasonable to ensure the safe custody of the party; but to say that a constable was entitled to search every person he took into custody, was a thing which could not be established by law; indeed, if it could, then many parties would be subjected to a gross indignity.

The plaintiff was examined with other witnesses in support of the above case.

Allen, Serjt., in addressing the jury for the defendant, said:—It was the duty of the constable, when he was aware that a person was about to commit or had committed a breach of the peace, to apprehend him; and having done so, he was responsible for his safe custody until he was taken before a magistrate. To search all persons who were taken into custody upon any charge, whatever that might be, was unjustifiable; but there were cases in which it was the plain duty of the officer to search the persons of the prisoners, and other cases in which the duty was not quite so plain, and upon which the officer must exercise his judgment. Among the class of cases in which a search of the prisoners should be made were charges of violence and drunkenness, and in cases of that description the officer was bound to take care that a prisoner had nothing upon him with which he could do injury either to himself or another, while for a time he was, to all intents and purposes, a madman.

Witnesses were called to show that the plaintiff was drunk and used great violence. It was also proved that it was the usual practice to handcuff prisoners when taken from the station to the magistrate's office.

WILLIAMS, J., in summing up, said:—The case was one which required careful and anxious consideration on the part of the jury. On one hand, it is clear that the police ought to be fully protected in the discharge of an onerous, arduous, and difficult duty—a duty

necessary for the comfort and security of the community. On the other hand, it is equally incumbent on every one engaged in the administration of justice, to take care that the powers necessarily entrusted to the police are not made an instrument of oppression or of tyranny towards even the meanest, most depraved, and basest subjects of the realm. The law applicable to the present case is that, if a police officer saw a man so conducting himself that the public peace was broken, or likely to be endangered unless that man was taken into custody, the police officer not only may, but is bound to take him into custody, and take proper measures to keep him till such time that he is taken before a magistrate. He might take all proper and reasonable means for apprehending, securing, and taking before a magistrate; at the same time he must take care not to use any wanton or unnecessary violence in taking these means, and if he does so, then he is answerable in an action for damages. Applying this principle to the present action, if the plaintiff is to be believed, it is clear that no breach of the peace was to be apprehended, and there were no grounds for his being taken into custody; but if, on the other hand, the defendant's account was to be relied on, it is equally clear that he had made out that it was his duty to apprehend the plaintiff, and he is not liable to damages unless he had been guilty of some excess in the mode in which he had performed his duty, either in apprehending the prisoner, keeping him while in custody, or taking him before a magistrate for the purpose of being made amenable to the law. With reference to that excess there have been three points dwelt on by the plaintiff's counsel, namely, the searching, the handcuffing while taking him to the magistrate, and putting him in a cell with a common felon. The last point you (the jury) will dismiss from your minds altogether, as the plaintiff swore that there was no one in the cell with him, and therefore he could not have suffered any injury in that respect. The other points involve questions of law of great importance. First, with respect to handcuffing, the law undoubtedly is, that police officers are not only justified, but they are bound to take all reasonably requisite measures for preventing the escape of those persons they have in custody for the purpose of taking them before the magistrates; but what those reasonable measures are must depend entirely upon circumstances, upon the temper and conduct of the person in custody, on the nature of the charge, and a variety of other circumstances which must present themselves to the mind of any one. As to supposing that there is any general rule that every one conveyed from the police station to the magistrates' court is to be handcuffed, seems to me to be an unjustifiable view of the law, and one on which the police officers are mistaken. In many instances a man may be conveyed before the magistrates without handcuffing him, and taking him thus publicly through the streets. On the other hand, it is necessary to take proper precautions in conveying a person in custody to be dealt with by the magistrates; and you must say whether, looking at all the circumstances of the case, the defendant used unreason-

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I. EIGH V. COLE. able precautions in this case, or used unnecessary measures to secure the safe custody of the plaintiff. With respect to searching a prisoner, there is no doubt that a man when in custody may so conduct himself, by reason of violence of language or conduct, that a police officer may reasonably think it prudent and right to search him, in order to ascertain whether he has any weapon with which he might do mischief to the person or commit a breach of the peace; but at the same time it is quite wrong to suppose that any general rule can be applied to such a case. Even when a man is confined for being drunk and disorderly, it is not correct to say that he must submit to the degradation of being searched, as the searching of such a person must depend upon all the circumstances of the case. You will consider, then, whether the case of the plaintiff is one in which a search should have been made; and if you are of opinion that it is not such a case, then you will say what amount of damages he is entitled to; but on the other hand, if you think the search was properly made, and the defendant was justified in making it, then the plaintiff is not entitled to any damages in respect of that part of the case; and you will adopt the same course with respect to the handcuffing.

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After reading over the evidence and commenting upon it, the learned judge said in conclusion:—If you believe the plaintiff you will give him substantial damages, as the case presented by him is of an aggravated nature; but if you believe the defendant, and that he properly took the plaintiff into custody, then you will have to consider whether he had, in the exercise of his duty, used unnecessary violence, either in apprehending him, retaining him while in custody, or in taking him before the magistrate; and if you think unnecessary violence was used, then you will estimate the damages.

The jury (after retiring) found a verdict for the defendant. At the same time they (through the foreman) expressed their opinion that it was improper to confine a man charged with drunkenness in the same cell with a person charged with felony; and that it was also improper to handcuff him to another prisoner when taking him before a magistrate.

WILLIAMS, J., thereupon reminded the jury that he had told them, if the defendant had been guilty of any excess of duty, they might give the plaintiff compensation for any injury he had received thereby.

The foreman of the jury said they had considered the matter, and they only expressed their opinion with reference to the future.

Verdict for the defendant accordingly. (a)

Keating, Q.C., and Gray, for the plaintiff.

Allen, Serjt., and P. M'Mahon, for the defendant.

[(a) No attempt was made to disturb the verdict.—J. E. D.]

OXFORD CIRCUIT.

STAFFORDSHIRE SPRING ASSIZES, 1853.

Stafford, March 17, 18, and 20.

(Before Mr. JUSTICE TALFOURD.)

REG. v. BLACKBURN AND OTHERS. (a)

Confessions—Inducement—Printed placard offering reward and promise of pardon—Accessory before the fact—Agreement to commit murder—Legal effect of statement—Evidence—Examination on the voir dire—Mode of determining competency of witness—Examination of witness—Form of question—Practice—Severance on trial—General reply where witness called by one of several prisoners.

1. *Statements made by a prisoner with the knowledge of a reward and pardon to any but the actual perpetrator of the offence, and under circumstances which lead to the belief that such statements were made with the hope of receiving the reward, and being allowed to give evidence as a witness on the part of the Crown, are inadmissible.*
2. *A printed copy of a reward offered for such private information and evidence as would lead to the detection and conviction of a murderer or murderers, and a statement that the Secretary of State would recommend the grant of a pardon to any accomplice, not having been the actual perpetrator of the murder, who should give such evidence, was hung up in the magistrate's room in the county gaol. A prisoner, who could read, made a statement to the governor of the gaol in this room, and before that statement inquired whether he could give evidence, but did not say that he made the statement in that expectation, or in the hope of getting the reward, and before making the statement, he was told it would be used against him :*

Held, that such statement was inadmissible.

3. *But statements made, and anonymous letters written by a prisoner before his apprehension, are not inadmissible merely on the ground of the prisoner's knowledge of the offer of the reward and pardon, or by reason of his having been employed by the police authorities and paid money for his support, under the belief that he was an important witness for the Crown.*
4. *A statement by a prisoner that A. had proposed to him to murder B. on the following night, and that he (the prisoner) agreed to go, but did not do so, is not of itself evidence that the prisoner was accessory before the fact to the murder of B. by A. on that night.*

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

5. *A woman, having been called as a witness against A., was examined on the voir dire, and said she was married to A. :*

Quære, whether it was competent to the counsel for the prosecution to call witnesses to show that she had, after the period of her alleged marriage, and with reference to the present charge, stated and sworn that she was not A.'s wife.

Quære, also, whether the question of coverture is one to be decided by the judge or by a jury.

6. *A witness, called to prove that he had seen a prisoner at a particular spot at a certain time, added that he had since seen a number of men in gaol, and had pointed out one :*

Held, that the following was a proper form of question to put to the witness—" Who did you point him out as being ?"

7. *Where several prisoners are jointly indicted, the judge will not allow a separate trial on the ground that the depositions disclose statements and confessions made by one prisoner implicating another, which are calculated to prejudice the jury, and that there is no legal evidence disclosed against the other prisoner.*

8. *Where one of several prisoners calls witnesses on his behalf, the Crown is entitled to reply generally on the whole case.*

HENRY BLACKBURN, Charles Moore, and Edward Walsh, were indicted for the wilful murder of John Blackburn, on the 25th of October, 1852, at the parish of Castle Church.

Huddleston, Davis, and Holl, for the prosecution.

Allen, Serjt., and *Scotland*, for the prisoner Blackburn.

Cook Evans for Moore, and

Thomas, Serjt. (at the request of the court) for Walsh.

Allen, Serjt., before the jury were sworn, applied that the prisoners might be allowed to sever on their trials. It appeared from the depositions, that the evidence against Blackburn mainly rested upon statements and depositions made by the prisoner Moore, before Moore was himself in custody on the charge, and as those statements, although not evidence against Blackburn, would be read to the jury, they were calculated to prejudice his client's case. He admitted that he could not find any precedent for this application.

TALFOURD, J., said, he had no opportunity of knowing the nature of the evidence to be adduced against the prisoner Blackburn, but if there was nothing besides the accusations of Moore, it would become his duty to withdraw the case altogether from the jury as against Blackburn. The case must proceed in the ordinary way, and of course the counsel for the prosecution would inform the jury that the statements of a prisoner were only evidence against himself. Each prisoner had of course a right to challenge the jurors as they were called.

The case then proceeded. The facts, so far as they bear upon the points of law raised during the trial, were these :—

The deceased, John Blackburn, who was a farmer living at Ashflats, and his wife Jane Blackburn, were found murdered in their house on the morning of the 25th of October, 1852, and the house set on fire. The prisoner, Henry Blackburn, was one of

their sons, who lived at Wolverhampton, but occasionally worked for his father. Charles Moore was an Irish labourer, in the employment of the deceased, but living in the town of Stafford, where he cohabited with Catherine, the daughter of the prisoner Walsh, also an Irish labourer.

No suspicion fell on Moore in the first instance, and he appeared before the magistrates as a witness against Henry Blackburn.

Mr. Hatton, the chief constable of the county, in the course of his examination on the trial, stated the following facts:—

Henry Blackburn was taken into custody on Monday night, the 25th October. Before the 12th November, I had received three anonymous letters. The one marked No. 1, I received on the 29th October; No. 2, on the 3rd November; No. 3, on the 8th of that month. I did not know the handwriting. On the 12th November Moore was examined, before the magistrates, as a witness against Henry Blackburn, and on his returning through the town, I said, "I am not satisfied, Moore, with the way you have given your evidence to-day; it did not support the statement you made to me; you must either have perjured yourself, or deceived me." He replied, "the magistrates put the questions so quickly, that they did not give me time to answer." I then said, "do you mean to say that you have more to state?" and he said he had, and would go to my office to tell me. I told him I had not time to attend to him then; he must put it on paper, and bring it to me the next morning. He said he had no paper, and I directed that he should have paper, pen, and ink given to him. On the next day I received from Anderson this paper now produced. When I received the paper, I sent for Moore, and he was brought into the ante-room of the magistrates at the gaol. I asked him if that was the statement he had written for me, and he replied, "yes." I then said, "I now arrest you as the writer of several anonymous letters, showing a guilty knowledge of the murder of the Blackburns." He then said that he had written the letters marked No. 1 and 2. No. 3, I believe to be in his handwriting.

Huddleston was about to put in the letters for the purpose of having them read, when

Cook Evans objected, and, by permission of the learned Judge, put some questions to the witness.

In answer to these questions, the witness said a large reward had been offered to any one giving private information of the murder, and also a reward and free pardon by Government for any accomplice not the actual murderer. I gave instructions that the following handbill should be circulated:—

"From 5*l*. to 100*l*. reward. Whereas, on the night of the 24th of October last, John and Jane Blackburn, of the Ash Flats, in the parish of Castle Church, in the county of Stafford, were barbarously murdered, and their dwelling afterwards set on fire; the above reward will be paid by J. H. Hatton, Esq., chief constable of Staffordshire, for such private information and evidence as will lead to the detection and conviction of the offender or

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offenders: and a further reward of fifty pounds will be paid by the Government to any person who shall give such information and evidence as shall lead to the conviction of the offender or offenders; and the Secretary of State will recommend the grant of Her Majesty's gracious pardon, to any accomplice, not having been the actual perpetrator of the murder, who shall give such information and evidence as shall lead to the like result.—J. H. Hatton, Chief Constable of Staffordshire."

"Stafford, Nov. 4, 1852."

Daniel Bresnan is a person in the police force, and I was in constant communication with him. I desired Bresnan to give Moore at the rate of 1s. a day whilst he was a witness. I gave Moore employment myself for five days, as he stated he was starving. The first interview I had with Moore was on the 27th October. The ground of my complaint to Moore after the examination, on the 12th November, was because he had partly contradicted his previous statement to me. I have told Moore repeatedly, when he was treated as a witness, that he must speak the truth, but I never offered any inducement to him to make any statement. The handbill was circulated on the 5th.

Huddleston proposed that the letters Nos. 1, 2, and 3, should be put in and read by the officer of the court.

Cook Evans submitted that they were not receivable as evidence, because they were not voluntary statements made by the prisoner, but extorted from him in the hope of receiving a reward.

TALFOURD, J.—How can that be with reference to the first, which bears date October 28? The bill announcing a reward was not published before November 4.

Evans submitted that the directions given by Mr. Hatton for the prisoner to receive a shilling a day for giving evidence would render that letter and the next inadmissible; none of them could be received as voluntary and safe confessions.

His Lordship overruled the objection, and remarked that in *Boswell's case* (Carrington & Marsham, 384), Mr. Justice Cresswell, and Mr. Justice Patteson, had ruled that it was not only necessary to prove that a person had seen a handbill offering a reward and free pardon to any person concerned except the actual perpetrator of the crime, but that he also made the confession with the knowledge of and in the hope of receiving the reward so offered. The letters and statements were not confessions, but merely statements made by Moore to shroud himself and get others implicated. He was of opinion that the letters were admissible as part of the case for the prosecution.

[The letters, Nos. 1, 2, and 3, were then read. No. 1 referred to a conversation between a man named R. Till and Thomas Blackburn, in which the writer alleged that he heard one say to the other that when Henry Blackburn came they should get the money which they had been promised; and also that Till had the old man's boots under his arm. No. 2 was to the effect that it was Richard Till, a navvy, and not the man they called Rough

Dick, and that Till had been trying to sell the boots, saying it was all he had got out of 4L.]

Neither of these letters avowed that the writer had anything to do with the murder. But the third letter, dated November 7, deposed to circumstances which, if true, showed that the writer must have been present.

Captain Fulford, the governor of the county gaol, from notes made at the time, deposed to a statement made by Moore in the magistrates' room in the gaol, on the 15th of November, four days after he was charged with the murder.

On cross-examination, it appeared that at the time this statement was made, a printed copy of the handbill offering a reward and pardon was hanging up in the room, and the contents were known to the prisoner, who frequently, both before and after this statement, asked the witness whether he thought he (the prisoner) could give evidence, but he never said that he made the statement in that expectation or in hope of getting the reward, and the witness on this and all other occasions told the prisoner before he said anything, that his statements would be used against him.

TALFOURD, J., received the statement in evidence at the time, but on coming into court the following morning to proceed with the trial, said, that since the rising of the court the previous day, he had consulted Mr. Justice Williams, as to the admissibility of Moore's statements, and upon mature consideration they considered that all the statements put in were admissible, with the exception of that made to Captain Fulford. As it appeared that at the time it was made, the handbill offering a reward was in the office, and that the prisoner had the notion that he would be admitted as a witness for the Crown, they were of opinion, on mature consideration, that this statement was inadmissible, and he should therefore expunge it from his notes.

Catherine Walsh, with whom Moore lived, was called as a witness. On examination on the *voir dire* by *Cook Evans*, she said she was the prisoner Moore's wife, and had been married to him for fourteen months.

On examination (also on the *voir dire*) by *Huddleston*, the witness stated that she never told the magistrates, or coroner on the inquest, she was not married; that, on the contrary, she had told the coroner that her name was Moore. She also affirmed that she never told Bresnan or Mr. Hatton that she was unmarried. She further said she was married at the Protestant Church at Drogheda, fourteen months before, by the Rev. Mr. Rudd, officiating clergyman. She, however, admitted telling Mr. Hatton that she was married to Moore in Cumberland, in a room, at a time when she was lying ill.

Huddleston then proposed to call witnesses to show that the witness had represented herself as not a married woman, and if he succeeded in proving that fact, he should submit to the court that she was admissible for examination. He called the attention of the court to the circumstance that the woman had made her mark to the depositions by the name of "Catherine Walsh."

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TALFOURD, J., said he would consult his brother Williams on the point of the admissibility of evidence, to show that the witness had made statements to the effect that she was not married, and he accordingly left the court for that purpose. On his return, the learned judge stated that he and his learned brother both agreed that the witness should be for the present withdrawn, and in the meanwhile, they would consider whether the evidence was admissible. There was another question to be ascertained, namely, whether the disputed fact was an issue to be tried by the jury or by the judge.

Huddleston said he and his learned friends, considering that even if the woman was examined, they could not rely on her testimony, preferred to withdraw her altogether.

In the course of the trial, William Matthew Richards was called to identify the prisoner Blackburn as the person he had seen at a particular spot on the morning after the murder. It appeared that the witness had been taken to the county prison, and ten men were shown to him. He stated that he had pointed out one of those ten men, and *Davis* then put this question to him in examination-in-chief: "Who did you point out that one man as being?"

Allen, Serjt., objected to the form of the question as leading the mind of the witness. The witness had only previously said that he pointed out a particular man; but this question assumed that he had pointed him out as being some particular person whom the witness had seen elsewhere.

On the question being insisted on,

TALFOURD, J., said he thought the question was not objectionable in form. On the contrary, it appeared to him to be the only proper way of eliciting the fact. It avoided the common objection to questions put under these circumstances, for it did not lead the witness to identify the person he says he pointed out with the person seen elsewhere.

The witness then, in answer to the question, said he pointed out the one man as being the person he had seen at the spot previously described, and that the man he pointed out was the prisoner, Henry Blackburn.

Among the evidence adduced against the prisoner Walsh, was the following statement, made to Mr. Hatton: "Moore said to me on the Saturday before the murder, 'If you will come with me to-night, we shall get what will put us comfortably over the winter; the Blackburns were very old people, had no servants, and Henry had left for Wolverhampton that day, and could not be back till Monday; that they would be sure to get eight or nine sovereigns, the price of a cart he was about to buy; and, at all events, they would get some money, and if all failed, they could get a bit of bacon, and have a fry in the pan, for they had killed a pig on the Monday before.' Moore's wife remarked 'Charley, the old cove will ken your voice; Saturday night is a bad night to do it; the people will be all about on Sunday, and you will be sure to be found out;' on which Moore said, holding up a knife, 'This will stop her

from telling tales.' I then said, 'If that is the case they can prove nothing.' The knife handle was about fourteen inches long; Charley Moore made it from the handle of a hatchet. We agreed to go; I was to call Moore, but I did not do so until near daylight, when Moore came down and said it was too late to go, and that it was perhaps all the better, for that night would do as well. I agreed to that, and Moore then gave me my things, and I took them to Kirwan's. I was to return, but I did not do so; I went to bed with my wife, got up on Monday morning, and went to Stone collecting rags and bones; I returned in the afternoon, and sold what I had collected to Massey, of Foregate-street.

Witnesses were called on behalf of Henry Blackburn to prove an *alibi*. No witnesses were called for the other prisoners.

Huddleston, on behalf of the Crown, said that, although he claimed the right of a general reply on the whole case as affecting all the prisoners, he should not exercise that right with respect to Moore and Walsh, but should confine his observations to the case against Blackburn.

TALFOURD, J., said that he had considered the question, thinking it might arise, and that he and his brother Williams thought that if it had been insisted on, the Crown had the right to reply generally on the whole case. At the same time, he thought the discretion exercised by the counsel for the Crown on this occasion was extremely proper.

In summing up the evidence on the third day of the trial, the learned judge, after reading the statement of Walsh to the jury, said that by that statement the prisoner clearly showed that he agreed to become an agent in the murder; but if no fact beyond or inconsistent with that statement was established on the trial, he must tell them that there was no case against the prisoner Walsh.

Huddleston begged to submit to the learned judge that the statement of the prisoner, that he agreed to go with Moore to commit the murder, was evidence of his being, on his own confession, an accessory before the fact.

TALFOURD, J., said, I do not think that Walsh's statement can be considered in that light. By his own confession he became a party to a wicked bargain to commit the deed; but, as it turned out, the agreement as first made between them proved abortive, and, although the prisoner said he agreed to go on the following night, he affirmed that he did not, and he might have repented in the mean time. I do not think the prisoner's statement renders him an accessory before the fact, to become which he must have aided and assisted in the guilty scheme. But of course my opinion does not affect the question whether the prisoner's assurance that he did not go, is capable of belief.

The jury acquitted Blackburn, and found Moore and Walsh guilty, but recommended the latter to mercy.

Moore was executed, and Walsh's punishment was commuted to transportation for life.

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OXFORD CIRCUIT.

MONMOUTHSHIRE SPRING ASSIZES, 1853.

Monmouth, March 30.

(Before Mr. JUSTICE VAUGHAN WILLIAMS.)

REG. v. MURPHY. (a)

*Stealing in a dwelling-house—Menaces and threats—Statute 7 Will. 4 & 1 Vict. c. 86, s. 5.**In order to constitute the offence under the stat. 7 Will. 4 & 1 Vict. c. 86, of stealing in a dwelling-house, and by menaces and threats putting persons being therein in bodily fear, it is not necessary that all the persons engaged in the crime should be actually in the house; and if one remains outside, he may be equally guilty of using menaces and threats, if there was a common purpose to inspire terror. A threat to a person outside the house is not within the words of the statute, but it is a circumstance from which the jury may infer the line of conduct inside the house.**The act of placing persons with their faces against a wall, and desiring them not to look round, without the use of any actual violence, is evidence of an intention to obtain money by threats, and the bodily fear may be inferred, although the persons so treated may deny that such acts caused alarm or fear.*

DENNIS HIGGINS and Thomas Murphy were indicted for stealing on the 27th of October, 1852, in the dwelling-house of George Window, two pistols and a watch, his property, and by menaces and threats putting James Lewellyn and John Evans, clerk, then being in the said dwelling-house, in bodily fear. In a second count the prisoners were charged with stealing in a dwelling-house to the value of five pounds.

Huddleston for the prosecution.*W. H. Cooke* for Murphy. Higgins pleaded guilty.

The evidence showed that on the day of the robbery the prisoner Higgins and a man named Arnold, who had been convicted and transported for another burglary, called at the prosecutor's house begging, and made inquiries of James Llewellyn, a servant boy

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

about fourteen years of age, respecting the house and the family. Between six and seven o'clock in the evening these men, with four others, came to the house, some of them having their faces blackened, and others having crape over their faces. Higgins and the four other men went into the house, and ordered the servant boy and the servant maid to sit to the wall with their backs to them, and on no account to look round. A lady, who was staying in the house, seeing strange men in the place, ran out the back way, and proceeded to the rectory, about a couple of hundred yards off, and gave the alarm. The Rev. John Evans, a gentleman about fifty years of age, ran at once to the rescue, and when he got to an outer wicket-gate suddenly found himself caught up by both shoulders by a man, who, saying to him, "You are the very man we want," forced him gently forward, without hurting or trying to hurt him, to the front door, where he was received by a man with crape over his face and a pistol in his hand, and who made him sit down in the hall with his face to the wall, and ordered him to make no noise. There he found by his side two or three more of his neighbours, who, on coming to the rescue, had been caught and treated in the same way. In the meantime some of the other robbers ransacked the house, and, when that was done, Mr. Evans was taken out of the house into the dairy, and three men with pistols in their hands, taking him for the master of the house, required him to tell where the money was. He said he was a stranger to the house, and was never in that place before. One of them proceeded to search his pockets, but another said, "Blow out his brains, and do not waste time." He was a little frightened at this, and at seeing three pistols. His pockets were searched, and 20*l.* taken from him. One of them then pulled his watch out of his pocket, and he said, "Do not take that—it will not do you much good; it is an old piece." On which the searcher, looking at it, said, "Yes, an old family piece; you may keep it." Soon afterwards a signal was given, and they ran away from the house, two towards Hereford, and four towards Pontypool. On the 5th of November Murphy and Higgins were met on the road about seven miles from Hereford, by a constable who arrested Murphy, and found in a bundle on his back two pistols, one of which had been stolen from Mr. Window's. On Murphy was found only one shilling in money, and he stated that he did not know the bundle contained the pistols, or he should not have carried it. Higgins had four sovereigns. They both at once confessed what they had done. Murphy repeatedly admitted that he was at the robbery. He said that they all agreed not to do any violence to any one, and that he said, if they should hurt any one he would leave them, and that he merely met the parties outside and handed them to the front door; that he was not aware they robbed the parson, and he did not get a penny of the money.

There was not any evidence to show that Murphy was the man who held the pistol when Mr. Evans was placed against the wall,

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or one of the three who demanded where the money was. Llewellyn, the servant said, on cross-examination, that he was not frightened or alarmed at being placed against the wall.

Cooke, in addressing the jury for *Murphy*, said, that it would be for them, under the direction of the learned judge, to say what offence the prisoner was guilty of. He should not contend that the prisoner was not guilty of the crime of stealing in a dwelling-house, but here the prisoner was indicted on the charge of putting *James Llewellyn* and the *Rev. John Evans* in bodily fear, not by violence, but by menaces or threats. The words of the statute^(b) apply to any person who "shall steal any property in any dwelling-house, and shall by any menace or threat put any one being therein in bodily fear." Words or gestures must be used: merely causing the sensation of fear was not sufficient. No doubt that the presentation of three pistols at his head, with a threat to blow his brains out, was sufficient if it had been done by the prisoner, and within the house.

WILLIAMS, J.—The punishment is the same for both offences charged in this indictment, but I shall take the opinion of the jury on each of the two counts.

Cooke.—All I contend is, that the jury should acquit the prisoner of the charge involving menaces and threats.

WILLIAMS, J. in summing up, said:—The prisoner *Murphy* is indicted with *Higgins*, who had pleaded guilty, in the first place for stealing property in a dwelling-house, and by menaces and threats putting *James Llewellyn* and the *Rev. John Evans* in bodily fear, and secondly, with stealing property in a dwelling-house to the amount of five pounds. No one could doubt from the evidence that some persons entered the house and used menaces and threats, putting any person being in that house in bodily fear. The question is, whether the prisoner took such a part as to be responsible for the acts of the others? If you think he was one of the party who went to rob, and was there standing at the door to render assistance, then he is responsible for the robbery equally with the persons actually taking the money; so if their common purpose was by their conduct to inspire terror, then the prisoner is responsible for the acts of the others. If you think there was a common purpose to rob you will say so, and if you think there was a common purpose to use threats you will say so. As to the first question, to which the second count of the indictment applied, there cannot be any doubt if you believe the evidence. Then as to the first count, the prisoner's own statement put it beyond a doubt that the plan was to put the persons' faces to the wall. You will say whether that is not an intention to obtain money by threats. Then comes the question whether the witnesses were not put in bodily fear. The threat to blow out *Mr. Evans's* brains was done outside the house. That alone is not sufficient within the words of the statute, but it is a circumstance from which you

(b) Stat. 7 Will. 4 & 1 Vict. c. 86, s. 5.

may infer the line of conduct inside the house. You cannot doubt that such conduct and the use of such language must inspire fear, however unwilling witnesses might be to admit they were terrified.

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*Verdict, guilty on the second count,
not guilty on the first count.*

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OXFORD CIRCUIT.

MONMOUTHSHIRE SPRING ASSIZES, 1853.

Monmouth, March 31.

(Before Mr. JUSTICE VAUGHAN WILLIAMS.)

REG. v. WILLIAMS AND OTHERS. (a)

Evidence—Putting deposition in hands of witness to refresh his memory.

Where a witness for the prosecution gives a different answer on examination-in-chief to that which was expected, his deposition before the coroner or justices, as the case may be, may be put in his hands for the purpose of refreshing his memory, and the question then put to him.

If the witness persists in giving the same answer after his memory has been so refreshed, the question may be repeated to him from the depositions, in a leading form.

GEORGE WILLIAMS and two other persons were indicted for the manslaughter of Edward Gwillim. The death of the deceased was the result of a public-house quarrel. One of the witnesses for the prosecution having replied in the negative to a question, whether he saw anything done to the deceased after he was on the ground?—

Huddleston, for the prosecution, proposed to put the deposition of this witness on the coroner's inquest into his hands.

Skinner, on behalf of one of the prisoners, objected.

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

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WILLIAMS, J.—This very point was raised before me on the Welsh Circuit, where a witness gave evidence different to what was expected. I thought it a point of some difficulty, but I admitted it to be done on the ground of refreshing the memory of the witness; and the Court of Queen's Bench afterwards held that I was right.

The deposition was then put in the hands of the witness, who looked at it, and the same question being repeated, he still answered, "I did not."

WILLIAMS, J.—You cannot get any further.

Huddleston then took the deposition and put a question to the witness in a leading form from it.

Skinner objected, but the objection was overruled,

WILLIAMS, J., observing that, after refreshing the witness's memory and failing, there is no objection to putting questions in the form proposed.

This question was then put to the witness: "After the deceased fell, did you see persons kicking and beating him?" Witness, "I did not."

WILLIAMS, J., subsequently referred to *Russell on Crimes*, by *Greaves*, vol. ii., p. 897, observing that what he had now decided was not new law.

The prisoners were acquitted.

Ireland.

QUEEN'S BENCH CHAMBER.

(Before PERRIN and MOORE, JJ.)

October 29, 1853.

REG. AT THE PROSECUTION OF CANNOCK & CO. v. CANTWELL.(a)

Certiorari to remove indictment—Private prosecutor—When issued on application of—Discretion of judge in vacation to refuse fiat—Public prejudice excited by newspaper articles. Newspaper paragraphs, speaking of the respectability and high character of a traverser, and expressing a confidence in the innocence of the accused, and requesting their readers to forbear judging of the case until after the trial, are not sufficient grounds for removing an indictment in order to obtain a special jury, or saying that common jurors are unduly prejudiced against the prosecution.

The practice, in Ireland, as to issuing the writ of certiorari to remove indictments not prosecuted by the Attorney-General, is similar to that provided by the 5 & 6 Will. 4, c. 33 (English), viz., that a private prosecutor, in order to obtain the writ, must apply to the court in term time, and to a judge thereof in vacation, for his fiat.

Such a rule in Ireland, and, semble, the English act, implies a discretion in the judge to whom the application is made to grant or refuse his fiat, and does not require such judge to make the order as of course.

The Court or a judge in vacation, even if a case be made by prosecutor for granting the order, will refuse a fiat if such case be displaced, or it is shown that the rule would be productive of hardship and injustice to the traverser.

WHITESIDE, Q.C., moved that a writ of *certiorari* do issue to remove the indictment in this case into the Queen's Bench. A member of the firm prosecuting, stated in his affidavit that a bill of indictment had been found against the traverser for stealing a piece of ribbon in the shop of the prosecutors; that, in consequence of the various publications which had appeared in several Dublin newspapers, as deponent believed, and particularly an article which appeared in the *Freeman's Journal*, a paper in extensive circulation, and read in the city, to which he referred, and from the feeling excited in the mind of the class of persons summoned as jurors in the Commission Court, he believed a fair trial could not be had before the jury impanelled for the present commission, a copy of the panel whereof had been procured by the traverser's attorney, as he was informed and believed; that for the ends of justice he believed it would be necessary that the case should be tried in the Queen's Bench, where a jury could be had composed of persons of intelligence, and unlikely

(a) Reported by P. J. M'KENNA, Esq., Barrister-at-Law. •

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to be influenced by any prejudice; and that the application was not made for the purpose of delay. The following is the article referred to: "Exercising a discretion which all right-minded people will appreciate, we omitted from our police reports the charge recently made against one of the most respectable and highly-esteemed ladies in Dublin. We did so, not because of the respectability of the lady and her connexions, but because the testimony on which she was accused seemed to us to be just of that character which called for a wise exercise of discretion, and suggested the propriety of not parading any lady's name before the public on a *prima facie* case in connexion with so serious a charge, and so imperfectly sustained, until she should, at least, have the opportunity of making her defence. The time approaches when this lady will have to make her defence, and by refuting the accusation sustain her high character and return to her home spotless as when she left it on the morning of her arrest. The circumstances under which she was arrested were peculiar—in an open shop, no friend near, surrounded by strangers—and her legal friends are, therefore, compelled to appeal to the sense of justice of those ladies who were present. Strangers though they be to the lady who claims their sympathies, we doubt not they will at once and cheerfully come forward to give her, to give the law, to give the cause of justice the benefit of their evidence, whatever that may be. The appeal of Miss Cantwell's solicitors appears in another column. We feel confident no lady—no woman with a woman's feelings—can hesitate to respond."

PERRIN, J.—Do you state anywhere that material important questions of law will be likely to arise in the case.

Whiteside, Q.C.—No. We do not rest our application on that ground. We are entitled to have this writ issued, as of course, on behalf of the prosecution, and it was only for greater caution that we served notice of this application. In any case, if there is a fear that we cannot have an unprejudiced jury, we should get our order. A suggestion that the jury may be prejudiced is sufficient ground for granting the writ. In *R. v. Lewis* (4 Burr. 2456), which was an application that a *procedendo* be directed to the magistrates of Glamorgan, in Wales, on an indictment removed by *certiorari*; from thence into the Court of Queen's Bench, Lord Mansfield, in giving judgment, discharging the rule *nisi* for the *procedendo*, says, "That when the Crown really prosecutes, and not a private individual, it is a matter of right for the Attorney-General to obtain this writ on the part of either the prosecutor or defendant. But when the matter is really prosecuted only by a private person (which private person is under the control of the Attorney-General, who may stop the prosecution), there is a distinction. In the case of an application on the part of the prosecutor for a *certiorari*, it goes of course; in cases of application by the defendant, there must be a special ground laid, in order to remove it from Wales or from any jurisdiction whatever, and this *certiorari* is moved for by the prosecutor. What ground is shown 'why he

should not have it? None. Here are eight or nine defendants concerned in a question about repairing a highway *ratione tenuræ*. I do not know how many cousins these eight or nine defendants may have at the quarter sessions at Wales." In the same case, Mr. Justice Ashton says: "The true distinction is that, when the prosecutor moves for it, it goes of course; but the defendant must shew a special ground to obtain it, or to remove the record back again by *procedendo*." In *Rex v. Cowle* (2 Burr. 862), Lord Mansfield says: "A doubt whether a fair, impartial, or satisfactory trial can be had there, is a reason for removal from the highest court. A *certiorari* is granted, of course, on the application of the Crown, but not so when a defendant applies; but he must lay some ground for it before the court, supported by affidavit: (*R. v. Eaton*, 2 T.R. 89; *R. v. Battams*, 1 East, 304.) In *Reg. v. Lever* (1 Will. Woll. & Hodg. 35), an indictment found at the assizes was allowed to be removed by *certiorari*, when it appeared that paragraphs had appeared in the newspapers which were likely to prejudice the minds of the petty jurors. There has been an act (5 & 6 Will. 4, c. 33) passed in England, which makes an application to the court or a judge necessary. There is none such, however, in this country; and those cases in England, previous to the passing of that act, to the effect that this writ issues, as of course, for a prosecutor, although cause must be shown for it by a traverser, are authorities in this country. If the application by a private prosecutor should be for improper purposes, the Attorney-General can interfere and prevent his getting it. An advertisement has also been inserted in the newspapers, calling on ladies who were present at the time to come forward on behalf of the traverser: this can only have been to excite a prejudice in her favour.

Fitzgibbon, Q. C., and Meagher, contra.

They do not swear that the article has warped the public mind. The magistrate before whom this lady was brought, said this case ought to be tried at once, and returned the depositions to the present commission for that purpose. This application is not to be treated with favour, as we only received notice late yesterday evening, and the notice does not state when the application will be made. In the first place, this writ does not issue as of course: (Hayes Crim. Law, tit. "Certiorari," Hawk. Prac. Cor. 401.) In the note to Hawkins, it is stated that this writ issues, of course, at the instance of the public prosecutor, and that a private prosecutor may have it on making a case for it. They have not made a case for this here, but even if they had we are ready to displace it, and show it would be a monstrous injustice to allow this writ to issue. The traverser is one of several sisters who keep one of the most respectable boarding schools for young ladies in Dublin. From the affidavits, it appears these ladies have but limited means and would be unable to bear the expenses of a trial at bar; that briefs have been given out to three counsel to defend the traverser at the present commission, and that she has gone to very great expense preparing for her trial; that a postponement would

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be most injurious to her school, having such a charge hanging over her head. As to the insinuation that we got a copy of the panel, the prosecutor's attorney at the same time applied for and got a copy of it. Our attorney states that there are eighty-two persons on the panel, and that neither he nor any one on his behalf had any communication with any of the jurors. He further states that the advertisement referred to was inserted by advice of counsel, as there were several ladies in the neighbourhood of the traverser who were unknown to her, and who might be able to throw some light on the matter. We have an affidavit from the medical attendant of the traverser that she is seriously indisposed on account of the state of excitement she is in as to the trial, and that the consequences may be very dangerous if the trial should be postponed. This is not a case in which the prosecutor should be facilitated.

Whiteside, Q. C., replied.

Their Lordships, at the conclusion of the enquiry, requested the counsel to withdraw, and after a considerable period, having recalled the parties, proceeded to deliver judgment.

PERRIN, J.—This is an application for a fiat, to issue a writ of *certiorari* to remove the bill of indictment found in this case before the Commission Court. The practice in Ireland, we have ascertained from the officer is, not to issue the writ in vacation without a fiat from a judge, or in term time, without an order of the court. This was not the practice in England formerly. There was no application made to the court, but the fiat was obtained by entering a side-bar rule, counsel getting a fee of half-a-guinea, and writing his name on the brief. The English practice has been altered by an act (5 & 6 Will. 4, c. 33) which directs that the writ shall not issue except on application to a judge in vacation or to the court in term time. I apprehend the origin of the rule in this country was for the same reason that this act was passed in England, viz., that a judge should see reason for permitting the writ to issue. As I should understand the rule here, it is that the writ is granted on some grounds being shown, when the Attorney-General is not the prosecutor. It has been argued that a judge in chambers should make the order, unless grounds were shown for not issuing the writ. We, however, think the writ should issue on grounds appearing satisfactory to the judge to whom the application was made. The grounds suggested by the affidavit for removing the record are, that in consequence of various publications, some of which are enumerated, feelings have been excited in the public mind, and amongst the class from which the jury will be selected, and that deponent believes an unprejudiced trial cannot be had. My brother Moore and I have considered what is stated in these affidavits, and we are satisfied there are no sufficient grounds suggested for granting this application. We do not prejudice the case for the prosecution in coming to this conclusion, as the trial may be postponed by the court now sitting, if satisfactory grounds are shown for so doing. It has been argued that we are

bound to make the order as a matter of course, and that the traverser, if so advised, should apply to set it aside. I suppose if there is to be an application to a judge, he is to see some grounds for granting it; otherwise it might go as of course from the office, and I consider the rule that a judge is to be applied to, implies that he is to have a discretion in the matter. Under these circumstances, in the absence of any authority, we consider this application should be refused. We find, after enquiry and examination, that where an application such as this has been made, grounds have been stated on behalf of the prosecution for seeking the order. My recollection is, that when such applications were made on behalf of a private prosecutor, it was always on special grounds, stated for the purpose of obtaining the fiat. We do not think the grounds stated in the present affidavit sufficient, and not seeing any other grounds on which we should issue this writ, we must refuse to make the order. As regards the argument that the writ should issue of course, we have been pressed by this difficulty, that if that proposition be correct, there is no case in which we should refuse to issue this writ.

MOORE, J.—I concur in the opinion of my brother Perrin, that no sufficient grounds have been stated for issuing a *certiorari* to remove the indictment in this case. I see no grounds for saying that out of so large a panel, eighty-two, an impartial jury may not be had to try the case. As to the newspaper article referred to in the prosecutor's affidavit, I do not think it is one likely to prejudice the public mind, or thereupon that the person charged should be put to the inconvenience and expense of having this case removed into the Court of Queen's Bench, and have this accusation hanging over her head. I confess I was pressed by the English cases that a private prosecutor might have the writ as a matter of right in vacation by going to the office, and in term by giving a fee to counsel, and thereupon getting a side-bar rule. In this case of *R. v. Pasman*, in 2 Dowling, I find great expense and inconvenience to parties was caused by issuing those writs as of course. I think the act which was passed in the subsequent year (5 & 6 Will. 4, English) was to provide for the hardship resulting from the previous practice; for I find in the preamble to that act the following recital: "whereas it is expedient to prevent prosecutors of indictments and presentments from vexatiously removing the same out of inferior courts into His Majesty's Court of Queen's Bench;" it then proceeds to enact that application should be made to that court, or a judge thereof, in the same manner as motions were made by defendants to remove indictments. Such is now the law in England. In this country, however, we have no such enactment, neither is there any necessity for it, as the practice here has been to apply to the court in term time, and to a judge in vacation, for his fiat, where a private prosecutor seeks to obtain this writ. I agree with my brother Perrin that there would be no meaning in this rule if the writ were to issue of course when such application should be made. In *R. v. Lewis* (4 Burr.) Lord Mansfield lays down the rule in cases where the Attorney-General

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applies for it, and draws the distinction between public prosecutions by the Attorney-General, and private prosecutions by individuals in his name. We think here that for two reasons the prosecutors should not have this writ. In the first place, no sufficient case has been made by them; and again, even if there were, looking to the delay, the expense, and the vexation to which the traverser would be exposed, we should not grant this application.

Rule refused. No costs.

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COURT OF QUEEN'S BENCH.

January 27, 1854.

(Before LEFROY, C. J., CRAMPTON, and MOORE, JJ.)

REG. AT THE PROSECUTION OF SARAH DEASE, *otherwise* THEWLES
v. SARAH KELLY, C. W. CAMPION, and J. R. MALONE. (a)

Summons before magistrate—Death of sole prosecutrix—Continuing proceedings.

When, upon a summons before a magistrate, the sole complainant dies, after obtaining a conditional order that the magistrate should proceed on the summons and take the informations, the court will not make such order absolute, although the husband of the prosecutrix offers to go on with the case and make himself liable for the consequences if the prosecution should appear to be malicious.

A., a married woman, issued a summons for an illegal conspiracy to defeat justice by destroying papers in issue in a will case. The magistrate, after hearing the evidence, refused to proceed in the matter, or to take the informations. A conditional order was obtained to compel him to do so, and between the obtaining of the conditional order and the showing cause, A. died. B., her husband, came in to make absolute the conditional order, and offered to go on with the summons and make himself liable as the prosecutor :

Held, that the cause shown should be allowed, and the order discharged, but without costs, as there had been a fatality.

IN this case the following order had been obtained by J. D. Fitzgerald, Q.C.:—It is ordered by the court, pursuant to the provisions of the statute passed in the twelfth year of the reign of her present Majesty, cap. 16, sect. 5, that Thomas F. Kelly, one of the divisional justices of the court of the Rotundo police dis-

(a) Reported by P. J. M'KENNA, Esq., Barrister-at-Law.

trict of the Dublin metropolis, Sarah Kelly, C. W. Campion, and J. R. Malone, do within six days after service of a copy of this order on them respectively show cause why the said T. F. Kelly should not proceed upon the summons issued by him on the 12th September last, whereby the said Sarah Kelly, C. W. Campion, and J. R. Malone, were summoned to answer the complaint of the said Elizabeth Dease, otherwise Thewles, for unlawfully conspiring to defeat the course of justice by procuring the destruction of certain letters in issue in a cause pending in the Court of Prerogative in Ireland, wherein the said Elizabeth Dease, otherwise Thewles, was impugnant, and the said Sarah Kelly was promovant, being the originals of the documents known in the said cause, as exhibits A. B. C. D. & E., and take the informations of the witnesses produced on behalf of the prosecutrix therein.

Armstrong showed cause.—This order is misconceived in form; it is to show cause why he should not do a particular thing; it should have been to do it, unless cause were shown within the time prescribed by the order.

LEFROY, C. J.—If you look to the words of the statute you will find that that order is in the form pointed out there: (12 & 13 Vict. c. 16, sect. 5.)

Armstrong.—Since the order has been obtained, the sole complainant, Mrs. Dease, has died. Again, they do not state they ever tendered the informations to the magistrate. In *Ex parte Hughes* (1 Ir. Law Rep.) an application to this court to compel magistrates to take informations was refused on the ground that the informations in writing had not been tendered to them. In that case, Burton, J., says, "written informations should be tendered, and, on applications like the present, these informations should be brought before us, that we may judge of their sufficiency. It is not enough that the substance of them should be stated to the magistrates, but having been reduced to writing, and tendered to them, if they refuse to take them, on coming before us we would accept or refuse them, according as we considered them sufficient or otherwise, and grant or refuse the motion."

MOORE, J.—There is now another course of proceeding by the magistrate. A summons is issued before the informations are tendered, and the magistrate, on the case coming on to be heard, may say he will not proceed in the matter; would you still maintain that the information should be tendered?

LEFROY, C. J.—That case in Irish Law Reports was in 1839, and since that time the statute under which the present application is made was passed for the purpose of providing a brief and inexpensive procedure in obtaining the opinion of the court.

Armstrong.—As this lady is now dead, if this should turn out to be a malicious prosecution, we should have no person against whom to bring an action.

S. Ferguson, contra.—The death of the complainant should not affect this proceeding: (1 Dick Quar. Sess. 139.) A criminal prosecution being instituted in the name of the Crown for the further-

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ance of public justice, and to punish violations of the peace, does not abate with the death of the prosecutor like a civil action, even though the injury be chiefly of a personal kind, as an assault or a libel. In *Rez v. Ellers* (1 Wilson, 222,) the defendant was indicted for insulting Mr. Burdry, a justice of the peace, in the execution of his office. Mr. Recorder of London moved that the defendant's recognizance might be discharged upon an affidavit, that Mr. Burdry was dead, and that the defendant had been in gaol ever since October last. The application was opposed by the Attorney-General, and the court said, "this is a matter well becoming the Government to prosecute, and the defendant must either plead not guilty, or confess the indictment." The informations here were reduced to writing, but not taken or signed. The magistrate said he did not think in point of law a sufficient case had been made, and refused to proceed on the summons.

CRAMPTON, J.—Ought not the conditional order to have been for the magistrate to take the informations, and not to proceed on the summons?

Ferguson.—The magistrate thought there was a difference between a conspiracy for suppressing evidence in civil and criminal cases. The conspiracy that we charged was for making away with papers in issue in the will case of *Kelly & Theales*. As to the objection that there is no person liable if this should turn out to be a malicious prosecution, Mr. Dease offered to go on with the case, and is ready to make himself liable. As to Mr. Dease taking out a fresh summons, which will put us to a very great expense in again bringing up witnesses from England and elsewhere, even if he did, the magistrate would again refuse on the same grounds as he had already refused to proceed on, and we should have to come to this court again for relief with the same case that we are now making.

LEFROY, C. J.—If the magistrate had gone the length of taking the informations, you could get an order to make him return them. This is an inchoate proceeding, and we have no informations on which we could direct the magistrate to do the proper acts. Is there any case in which, at the instance of a dead person, the court has directed the magistrate to go on?

CRAMPTON, J.—The husband, Mr. Dease, can take out a new summons, and proceed on it.

Per Curiam.—Allow the cause shown without costs, however, as this was a fatality.

Ireland.

COURT OF CRIMINAL APPEAL.

(Before LEFROY, C. J., MONAHAN, C. J., TORRENS, BALL, and JACKSON, JJ.)

November 22, 1853.

REG. v. MILLER AND CONNORS. (a)

Receiving stolen goods—What amounts to—Directions as to disposing of.

It is not necessary, to constitute a receiving of stolen goods, that the person indicted should have had manual possession of the goods; but directing a servant to dispose of them, as by pawning or otherwise, will be sufficient to support the charge.

Stolen property is brought by the thief into A.'s shop; A. with guilty knowledge, calls her servant and directs her to take the stolen goods to the pawn office and "pawn them for the girl" (the thief.) A.'s servant does so accordingly, and brings back the money, which she hands to the thief in her mistress's presence. A. never had manual possession of either the goods or the money.

Held, that this amounted to a receiving by A. of the stolen property, and that the conviction of A. for receiving should be affirmed.

THE following case was stated for the opinion of the court by Walter Berwick, Esq., Assistant Barrister of the East Riding of the county of Cork.

Case.

The prisoners were tried at the last general Court of Quarter Sessions for the East Riding of the county of Cork, holden at Fermoy, upon an indictment charging them in one count with stealing, and in another with receiving, five pieces of cotton, knowing them to have been stolen. From the evidence of the prosecutor, Michael Joseph Magnin, who kept a woollen and linen draper's shop in the town of Fermoy, and of his shopman, it appeared that they missed from his shop from time to time, between the 1st of January and 22nd of July in this year, a great number of pieces of printed cotton, and they identified five pieces produced as some of those thus missed, and they stated that none of those five pieces had been sold at their shop, and if sold, the labels would have been taken off and the folds altered, and that the prisoner, Ellen Connors, used to come into the shop, sometimes three or four times a day with a basket and a shawl, and on some occasions got patterns, and generally bought half a yard and sometimes bought a few yards, but never bought a whole piece, and certainly did not

(a) Reported by P. J. M'KENNA, Esq., Barrister-at-Law.

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purchase any of the five pieces of cotton then produced. The five pieces produced were proved by a pawnbroker to have been pawned in his office in Fermoy at several times in the present year in the month of April, and the rest in the month of June. They were entire pieces, made up in the manner in which whole pieces are kept in the shop, and had the shop labels upon them. Three of these pieces were proved to have been pawned by Ellen Connors, the prisoner. Another of these pieces, which was a piece of "pink cotton," had been pawned in the month of June by a person of the name of Margaret Geary. Margaret Geary was produced as a witness by the Crown, and proved that in the month of June she was in the employment of the other prisoner, Mary Miller, who kept a public-house in the town of Fermoy, and while in her service she pawned this piece of pink cotton in the pawn office in Fermoy; that she got it in her mistress's shop from Ellen Connors; that Ellen Connors came into the shop, and behind the counter, where her mistress was; that her mistress called witness into the shop, and Ellen Connors had then the piece of cotton in her hand; and her mistress then desired the witness "to take the piece of cotton to the pawn office, and to pawn it for the girl" (meaning Ellen Connors) and that she accordingly did so, and brought back the moneys received therein, and gave it, in Mrs. Miller's shop, and in her presence, to Ellen Connors, who was still remaining in the shop behind the counter with her mistress; but her mistress had not the cotton *at any time in her own hands*, nor did she receive any part of the money from her. This witness stated that on two other occasions she pawned two other pieces of cotton in the same manner by her mistress's directions, which she got from Ellen Connors in her mistress's shop, and in her presence; that Ellen Connors had a shawl over the pieces of cotton. These two latter pieces were not identified or shown to have been stolen. Catherine Higgins, another servant of Mrs. Miller's, was examined as a witness, and stated that she saw Ellen Connors, who was neither living with nor had been in the service of Mrs. Miller, bringing cottons to Mrs. Miller's house. That Ellen Connors got the loan of a cloak from Mrs. Miller, and used to go out and bring in cottons after taking out the cloak. These pieces of cotton used to be torn up by Mrs. Miller and Ellen Connors, and given to the witness to pawn. She used to give the money got at the pawn office for these cottons to Ellen Connors, and, if she was not there, to Mrs. Miller herself. There was no evidence to show that any of the cottons referred to by this witness were stolen, and no objection was made to the reception of any of this evidence. This was the case for the prosecution. Mr. Green, who appeared as counsel for the traverser, Mary Miller, called on me to tell the jury that they should acquit his client, as there was no evidence against her of a receipt of stolen goods, inasmuch as the only piece of goods identified with which she was connected, was the piece of pink cotton, and that it had not been proved to

have been at any time in her possession. The evidence being that Ellen Connors had kept it in her possession till she delivered it to Margaret Geary, who had taken it to the pawn office, and that it had always continued to be in the possession of Ellen Connors till it had been pawned. He also called on me to tell the jury they must exclude from their consideration all the evidence respecting the other pieces of cotton which had been from time to time shown to be brought into Mrs. Miller's house by Ellen Connors, inasmuch as none of these were identified as any part of the stolen property. I refused to withdraw the case of Mary Miller from the jury, but told Mr. Green that I would reserve the case for the consideration of your Lordships in case of the conviction of his client, and he then went into evidence and produced several witnesses, and amongst others, a public constable, who proved that they had purchased from Ellen Connors, from time to time, pieces of cotton and shirting, which she carried about publicly in the town and sometimes to the police barracks; some of which she stated she had bought from Mr. Maguire, and that they had no idea she had stolen them, and that they had a good opinion of her character. This was the evidence given for the prisoner. I told the jury, that in considering the case of Mary Miller, they should confine their attention to the piece of pink cotton, which was the only one of the pieces of cotton taken into Mrs. Miller's house which had been identified; that they should first consider whether Ellen Connors was the thief, and if they were satisfied of that, then they were to consider whether Mary Miller received it from her knowing it to have been stolen; that I did not conceive it necessary, in order to constitute her a receiver, that she should actually have taken the goods into her own hands, but that if the servant, by her directions received it from the thief, and took it by her directions to the pawn office for the purpose of raising money thereon, the mistress intending thereby to make herself the agent for that purpose, it would be sufficient evidence of a receipt by the mistress; but I further told them, that even though they should be satisfied she had so received it, they must next consider whether at the time she did so receive it she knew it to have been stolen, and that although the evidence respecting the other pieces of cotton was no evidence whatever of any other receipt of stolen goods, or admissible for that purpose, yet, in my opinion, it was admissible for the purpose of showing the terms of the intimacy and dealing of the parties, and thus assisting the jury in coming to a conclusion how far the act of interference of Mary Miller, in desiring her servant to take the piece of pink cotton from Ellen Connors and to carry it to the pawn office, was to be considered as a taking of it into her control for the purpose of aiding the thief in raising money thereon, or was merely a direction to her servant to act in relation to it, as she, Ellen Connors, should desire. The jury found Ellen Connors guilty of stealing, and Mary Miller guilty of receiving, the piece of pink cotton, knowing it to

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have been stolen. As there was no doubt of the guilt of Ellen Connors, she was sentenced to six months' imprisonment, with hard labour. At my suggestion, the court postponed passing sentence on the other prisoner, Mary Miller, until your Lordships' opinion should be taken, whether under the circumstances stated, and the direction given by me, the conviction was correct. If the law was properly laid down by me, we were of opinion that the verdict of the jury was correct on the facts of the case as given in evidence. In this case I request your Lordships' opinion whether under the circumstances now stated, the conviction of Mary Miller was proper.

Corballis, Q.C., appeared for the crown.

J. S. Greene, for the prisoner.

The following cases were cited in the course of the argument:—

Reg. v. Oddy, 5 Cox Crim. Cas. 210; *Reg. v. Hill*, 3 Cox Crim. Cas. 533; *Reg. v. Wiley*, 4 Cox Crim. Cas. 412; *Reg. v. Carr*, 2 M. & R. 346.

January 18.

LEFROY, C. J., now delivered the judgment of the court.—In this case two questions have been reserved for our consideration. First, whether there was sufficient evidence that Mary Miller had received the stolen property; and, secondly, whether certain evidence regarding the former dealings between the two prisoners, to the admissibility of which no objection had been originally offered, had been left to the jury with the proper view. The evidence in support of the charge of receiving was this: the servant maid of Mary Miller was produced as a witness, and stated that her mistress kept a public-house in the town of Fermoy. That Ellen Connors, the other prisoner, entered the shop, and went behind the counter where she was; that her mistress called her into the shop; that Connors had then the pieces of cotton in her hand, which Miller desired witness to take to the pawn office and pawn, and that she did so accordingly; that she brought back the money which she then received, and gave it, in the presence of her mistress, to Connors, who was then in the shop, but that her mistress had never, with her own hand, received any part of the money from her. The question was, whether this was a receiving of stolen goods by the mistress? It appears to us that it was virtually a receiving by Mary Miller, inasmuch as her servant, by her order and direction, received the goods from the thief, took them to the pawn office, and brought back the money to the thief. This, in our opinion, was virtually as much a receiving of stolen goods as if her own hand, and not that of her servant, had received them. No question can be raised in this case involving the necessity of those subtle distinctions taken on former occasions, with respect to the continuance of the possession of the goods in the thief, for the goods here were clearly transferred to hands which were virtually those of Mary Miller herself. No question has been reserved relative to the sufficiency of the

evidence of guilty knowledge. We are of opinion that the evidence was left to the jury by the assistant barrister in the way in which it ought to have been, and therefore that his decision on both points ought to be affirmed.

[I have to thank Mr. Elrington for the report of the judgment in this case, the court having sat unexpectedly to deliver judgment.—REP.]

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OXFORD CIRCUIT.

STAFFORDSHIRE SPRING ASSIZES, 1854.

(Before MR. JUSTICE WIGHTMAN.)

March 16.

REG. v. QUALTER. (a)

Evidence—Dying declarations.

In order to render dying declarations admissible in evidence, the facts to show that the deceased was conscious of his state must point to the time of the statement, and therefore declarations some days prior to an expression that the deceased "had given up all in this world," were held inadmissible.

Where the deceased said he was "a murdered man, and it would have been better if they had killed him on the spot than left him to linger, and that he thought he should never get over it," but he lived several weeks afterwards :

Held, that there was a prima facie case for the admissibility of declarations made at the time of those statements.

But where the person to whom the declarations were made, stated that he believed the words "murdered man" were not used in their literal sense, and that the deceased did not appear to have any immediate fear of death on his mind :

Held, that the case was taken out of the principle on which such declarations are receivable in evidence.

JOHN QUALTER was indicted for the murder of Thomas Price, at Wolverhampton, on the 20th of June, 1853.

P. M'Mahon, and Staveley Hill for the prosecution.

Huddleston (at the request of the judge), for the prisoner.

The deceased left his home on the morning of the 19th of June, to attend Walsall market, and soon after midnight of the same day

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

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he was found lying outside his own house with his jaw smashed, his head and face bruised and beaten, and his clothes saturated with blood. He lingered until the 8th of August, when he died of the injuries he had received. The principal evidence to connect the prisoner with the murder, consisted in declarations made by the deceased under the circumstances stated by the following witnesses:—

Margaret Price, the widow of the deceased, said, that about a week before his death, he said to her, in answer to some observation made by her about the perpetrators of the act, "you will hear of them when I am gone;" and soon after made a statement to her. Two days before his death he said, "I have given up all in this world," and desired that a clergyman should be sent for.

WIGHTMAN, J., held that the statement being made prior to the expression that he had given up all in this world, was inadmissible.

Mr. Smallman, surgeon, who had been called in in the first instance, but had not attended the deceased to his death, said that he was in a very weak state, and life was only sustained by stimulants; the witness considered that the case was hopeless, but did not tell his patient so, on the contrary, he told him to have a good heart. There was nothing in his state to show the witness that he must have felt that he was a dying man; and he did not make any statement as to his hopes of recovery.

WIGHTMAN, J., expressed his opinion that this evidence would not assist in making the declarations to the widow admissible.

Andrew Brooks, police constable, was then called, and stated as follows:—On the 27th of June I went to the house of the deceased, and found him lying in bed. He spoke about his condition, saying he was a murdered man, and it would have been better if they had killed him on the spot than have left him to linger. He never expressed any hope of recovery. I told him I thought he would get better, to which he replied, "I cannot say; I don't think I shall ever get over it."

M^r Mahon now proposed to follow up this examination by asking the witness as to statements made to him by the deceased at this interview.

Huddleston objected.—The principle on which these statements are admissible is, that they are made under the belief of approaching death. Here the man lived several weeks, and was encouraged by the medical witness to expect his recovery. The expressions, "I am a murdered man," and that it would be better to kill him than let him linger on, were not to be taken literally. In *Reg. v. Nicholas*, 6 Cox Crim. Cas. 121, it was proved that the deceased, who lived a few hours after the wound was inflicted, made a statement, at the conclusion of which he exclaimed, "Oh! God! I am going fast; I am too far gone to say any more;" but he did not appear to have previously said anything about his condition, and there was no evidence, one way or other, to show that he was

aware of it, and it was held that the statement was inadmissible as a dying declaration. In that case Mr. Justice Cresswell, after consulting Mr. Justice Williams, said, "My brother Williams confirms the doubts I had on this subject, that, it being possible that this man did not discover the extent of his weakness till he had made the statement, and it was only after he had made it, he, for the first time, discovered that he was going fast; there is not, consequently, that clear ascertainment of his consciousness of his state, before he made it, to render it admissible in evidence." The general rule is laid down in Russell on Crimes, by Greaves.

McMahon replied, contending that in this case it was clearly proved that the man was in such a condition that he must have been conscious of his impending dissolution, and that it was not necessary that he should have used any expressions whatever declaring his belief that he could not recover, if his condition was such that he must have felt that he was a dying man: (*Woodcock's case*, 1 Leach, 503.)

WIGHTMAN, J.—The general principle is, that the deceased must be under the apprehension that he will die. In the present case there cannot be any doubt that the deceased was in that state, that if he was aware of it, the evidence would be admissible. Is there reasonable ground, then, to suppose that he was aware of his state? Neither the widow nor the surgeon state anything to show it, but the police officer does not vary in his statement, that the deceased said he was a murdered man. Neither of the authorities cited were exactly in point. In *Nicholas's case* there was nothing but the bare fact of statement, without any evidence of the actual state of the deceased; here there is something more. On the whole I am disposed to receive the declaration; and, at the same time, I shall reserve the point for the Court of Criminal Appeal, should it become necessary.

Huddleston then obtained permission to further cross-examine the witness before he was asked as to the declaration of the deceased. In answer to those questions the witness said, "I did not believe he was going to die then, nor in a day or two. I thought him in such a state that there was no impropriety in asking him questions. The expression, 'I am a murdered man,' is often used by persons without their meaning that they are going to die immediately, and I thought the words used by him were not used in any other sense." I asked him many questions which I should not have done, if I had seen anything to indicate that he apprehended he was going to die. The questions I put did not distress him, and from the way in which he answered them, I did not think there was any immediate fear of death on his mind, or that he thought he was in danger of his life.

WIGHTMAN, J.—I think the case is now *without* the principle on which such declarations are admissible; for if this statement were receivable, persons merely making statements that they are murdered or dying, would be admissible, although they did not really believe that they were dying.

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Upon hearing this opinion of the learned judge, the counsel for the prosecution said he should not proceed further with the case, it being impossible to adduce evidence independent of the statements, to warrant a conviction.

The prisoner was accordingly acquitted.

OXFORD CIRCUIT.

STAFFORDSHIRE SPRING ASSIZES, 1854.

Stafford, March 20.

(Before RUSSELL GURNEY, Esq., Q. C.)

REG. v. BALL. (a)

Perjury—Evidence—Reference of a cause and all matters in difference—Production of the Nisi Prius record—Evidence of materiality.

Where perjury is assigned upon evidence given before an arbitrator, upon a reference at Nisi Prius, of a cause and all matters in difference between the parties, it must be distinctly shown whether the evidence was material in respect of the matters in issue in the cause, or of the other matters in difference between the parties.

Quære, whether the production of the order of reference is sufficient evidence of the authority of the arbitrator, without producing the Nisi Prius record?

THE defendant was indicted for perjury. The indictment alleged that at the assizes holden at Stafford, in and for the county of Stafford, on Tuesday, the 9th day of March, A. D. 1852, before Sir William Wightman, Knight, one of the justices, &c., and Sir Thomas Joshua Platt, Knight, one of the barons, &c., and others their fellows, &c., assigned to take the assizes in and for the said county of Stafford, a certain cause was pending, wherein one Thomas Ball was plaintiff, and one Joseph Parker and one John Tooth were defendants; and the said cause came on to be tried in due form of law by a jury of the country in that behalf duly sworn and taken between the parties aforesaid, upon which said trial it was ordered by the said court and the said justices, with the consent of the parties, their counsel and attorneys, pursuant to the statutes in that behalf, that the jury should find a verdict for the plaintiff for the damages in the declaration, and forty shillings

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

costs, subject to the award or certificate, order, arbitrament, final end and determination of Rupert Kettle, Esquire, Barrister-at-Law, to whom the said cause and all other matters in difference between the said parties were thereby referred. The indictment then averred "that the said Rupert Kettle, as arbitrator as aforesaid, then and there proceeded to inquire and arbitrate touching the said cause and the matters then in difference between the said parties, and that at and upon the said inquiry and arbitration the said Thomas Ball appeared as a witness before the said Rupert Kettle, acting as arbitrator as aforesaid, and was then and there duly sworn as a witness to speak the truth, and nothing but the truth, the said Rupert Kettle, arbitrator as aforesaid, having competent authority to administer the said oath in that behalf to the said Thomas Ball;" and "that at and upon the said inquiry and arbitration the following questions became and were material questions, and each of them became and was a material question, whether he the said Thomas Ball had signed a certain paper writing then and there shown to him, and whether he had put a mark to a certain paper writing then and there shown to him, and whether he had ever before seen the said paper writing, and whether he had put a mark to any paper at the office of one Mr. Flint, and whether he had signed anything at the said office, and whether he had been asked to sign anything at the said office, and whether he had seen any paper with a stamp on it, or with a stamp off it, at the said office." The indictment then proceeded to assign the perjury by Thomas Ball, the plaintiff, in the usual way.

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P. M' Mahon and Cook Evans for the prosecution.

Scotland for the defendant.

The order of reference was produced by the arbitrator and put in. On the arbitrator being asked as to what questions were in issue between the parties, and whether he could distinguish between the matters in the cause and the other matters in difference,

Scotland objected that the *Nisi Prius* record must be produced to show what were the matters in issue in the action.

P. M' Mahon and Cook Evans, contra.—Application had been made for the record, but by the Common Law Procedure Act no record was now made up. The award was in favour of the defendants who had the control of the *postea*. It is proposed to read the original minutes of the associate, upon the authority of *Reg. v. Newman*, 21 L. J. 74, M. C. Moreover, the order of reference reciting the facts was sufficient evidence under the maxim, "*Omnia rite acta præsumentur*."

GURNEY, Q.C.—You must prove the allegation that the cause was then pending.

Scotland, in reply.—This is not within the maxim cited. This is a proceeding between the Crown and the prisoner, and not between the parties to the record, or the parties named in the award. The recital in the order of reference is not evidence, therefore, on this indictment. In *Newman's case* there was no allegation of any

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matter of record, as is pointed out by the reporter in a note to the case. Here the indictment alleged, and necessarily alleged, the cause pending, and the entry of a verdict, for without such allegation the indictment would have been demurrable or bad in arrest of judgment. The prosecution must show a binding reference by a judge at Nisi Prius, or by a judge's order.

GURNEY, Q. C.—That is not the point. It is said on the other side that the order of reference is sufficient proof of the facts alleged in the indictment. It is not disputed that some evidence must be given, but it is said that the recital in the order of reference is sufficient evidence. It might have been good secondary evidence if notice to produce the record had been given to the defendant; but without that, the general rule must prevail, that the original record or an examined copy must be produced.

In answer to questions then put by Gurney, Q. C., to the arbitrator, the latter said that it was impossible for him so to distinguish between the matters in the cause, and the other matters in difference between the parties, as to say definitively to which head the questions put to, and the answers given by the defendant, referred. It was admitted that there was no other evidence on this point.

GURNEY, Q. C.—That settles this case. It is not necessary to decide whether the record must be produced, for the prosecution must fail on another ground. In all these cases, it is necessary to show that the matter alleged to be falsely sworn was material, and that cannot be done in this case without proof that it was material either to the action or to the other matters in difference. The evidence failing to show this distinctly, the defendant must be acquitted.

Verdict—Not guilty.

COURT OF CRIMINAL APPEAL.

April 29, 1854.

(Before POLLOCK, C.B., PARKE, B., CRESSWELL, ERLE, and CROMPTON, JJ.)

REG. v. THOMAS HARRIS. (a)

*Embezzlement—Receipt of money by virtue of employment—Use of the master's mill for the private benefit of the servant.**H. was the miller of a mill in a county gaol. It was his duty to direct any person bringing grain to be ground at the mill, to obtain at the porter's lodge a ticket specifying the quantity brought. The ticket was his order for receiving the grain, and his duty was to receive the grain with the ticket, grind it, receive the money for the grinding, and account to the governor for the money so received. It was a breach of his duty to receive or grind grain without such ticket; but he had no right to grind any grain at the mill for his private benefit.**Having misappropriated money received by him from persons who brought grain to be ground without a ticket, he was indicted for embezzlement: Held, that a conviction could not be sustained, as the reasonable conclusion from the facts was, that he did not receive the money by virtue of his employment, but made an improper use of the mill for his private benefit.**Quære, whether he was a servant of the inhabitants of the county within the meaning of the statutes relating to embezzlement?*

THOMAS HARRIS was tried at the Epiphany Sessions, 1854, for the county of Worcester, upon an indictment charging him, as servant to the inhabitants of the county of Worcester, with embezzling three sums of money. There were other counts, in which he was described as servant to the Clerk of the Peace for the county of Worcester, and others.

He was found guilty and sentenced to twelve months' imprisonment; but execution was respited until the opinion of Her Majesty's justices and barons could be obtained upon the following

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Harris was the miller of a mill in the gaol of the county of Worcester. It was the duty of the prisoner to direct any persons bringing grain to be ground at the mill to obtain, at the porter's lodge at the gaol, a ticket specifying the quantity of grain brought. The ticket was his order for receiving the grain. It was the duty of the prisoner to receive the grain with the ticket, to grind the grain at the mill, to receive the money for the grinding from the person so bringing the grain with the ticket, and to account to the

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

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governor of the gaol for the money so received. The governor accounted for the same to Sir Edmund Lechmere, the treasurer of the county rates. It was a breach of the prisoner's duty to receive or grind grain without such a ticket as above-mentioned; but he had no right to grind any grain at the mill for his private benefit.

The prisoner was appointed to his situation by the magistrates of the county of Worcester, myself, and others, at a fixed weekly salary, which was paid to him out of the county rates by the governor of the gaol, who received the money for the purpose from Sir Edmund Lechmere.

The moneys which the prisoner misappropriated he received from persons for grinding their grain at the mill; but none of these persons had obtained a ticket as above-mentioned from the porter's lodge, nor had they been directed by the prisoner to obtain such tickets, nor was there, in fact, any ticket at all.

The offence, if any, took place entirely in the gaol for the county of Worcester, which is situate within the county of the city of Worcester, more than 500 yards from the county of Worcester. The county of the city of Worcester has a separate jurisdiction, and its own Recorder and Quarter Sessions.

It was objected, on the part of the prisoner, that the Court of Quarter Sessions for the county had no jurisdiction to try the case;

That the prisoner was not a servant, within the meaning of the embezzlement statutes, to either the inhabitants of the county, or to the Clerk of the Peace and others;

That the money he received he did not receive by virtue of his employment, nor for or on account of his masters, so as to constitute the offence of embezzlement.

It was agreed that any amendment in the indictment which the facts in evidence might warrant, and which the Court of Quarter Sessions had the power of making, should be considered by the Court of Criminal Appeal as made.

The Chairman requested the opinion of the Court of Criminal Appeal whether the conviction could be supported?

Huddleston, for the prisoner.

Selfe was called upon to argue on the part of the Crown.

PARKE, B.—What do you say as to the venue?

Selfe.—By 4 Geo. 4, c. 64, s. 48, the gaol is made part of the county. The next objection is, that the prisoner was not a servant of the inhabitants within the statute of embezzlement. (Upon this point no judgment was pronounced; but stat. 4 Geo. 4, c. 64, ss. 12, 15; *R. v. Callahan*, 8 Car. & P. 154; *R. v. Jenson*, 1 Moo. C. C. 434; *R. v. Spencer*, R. & R. 299; *R. v. Hey*, 1 Den. C. C. 602, were referred to.) Thirdly, it was objected that the money was not received by virtue of the employment; because the prisoner neglected another part of his duty, which was to require all those who brought grain to be ground to get a ticket specifying the quantity. [PARKE, B.—The question is, whether the omission to take a ticket was a mere neglect of duty, or whether it indicated an intention to use the mill on his own

account.] He had no right to grind any corn at all for his own private benefit; and it would be strange if he could exonerate himself from liability for one offence by committing another. [CRESSWELL, J.—He could only render his masters responsible by taking a ticket.] The masters would be responsible to all persons bringing corn to be ground at their mill, and could not exempt themselves by a private arrangement between them and their servant. *Reg. v. Snawley* (4 Car. & P. 390) is the only authority which favours the unreasonable supposition that a servant, by violating his master's orders in one respect, may free himself from responsibility for violating them in another; and that was questioned in *Reg. v. Aston* (2 Car. & K. 413.) [PARKE, B.—If he was misusing the mill for his private benefit, then he did not receive the money by virtue of his employment.] He could not receive it otherwise than by virtue of his employment.

POLLOCK, C.B.—We are all of opinion that this conviction cannot be supported. The only point on which I am to pronounce the unanimous opinion of the court is this, that, on the facts stated, it appears that the defendant had no right on behalf of his master to grind any corn but that which was brought with a ticket; and that the reasonable conclusion is that, as to all corn ground without a ticket, he intended to make an improper use of the machine, and did use it on those occasions for his private benefit. The money, therefore, was not received on account of his master; and he was not guilty of embezzlement.

Conviction quashed.

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master.*

COURT OF CRIMINAL APPEAL.

April 29, 1854.

REG. v. CARLISLE AND ANOTHER. (a)

Conspiracy to effect lawful object by unlawful means—Procuring abatement of price by false representations.

The offence of conspiracy may be committed by conspiring to use unlawful means for the accomplishment of a lawful object; and where A. and B., by false representations made to C., respecting a horse which the latter had sold to A., induced him to accept a smaller sum in satisfaction of the agreed price:

Held, that, although C. would not be bound by his agreement to accept the smaller sum, A. and B. were, nevertheless, properly convicted of a conspiracy.

THE defendants were tried before Cresswell, J., at the last Liverpool Assizes, on the following indictment:—"Lancashire, to wit.—The jurors for our lady the Queen, upon their oath present, that before the time of committing of the offences hereinafter mentioned, to wit, on the 23rd December, 1853, one Thomas Sibson sold to William Brown a certain mare, at and for the price, to wit, of 39*l.*, to be paid for the said mare by the said William Brown to the said Thomas Sibson, which said price, at the time of the committing of the offence hereinafter mentioned, was still due and unpaid. And the jurors aforesaid, upon their oath aforesaid, do further present that William Carlisle and the said William Brown, well knowing all and several the premises, but contriving and intending to cheat and defraud the said Thomas Sibson, did, on the day and year aforesaid, unlawfully conspire, combine, confederate, and agree together, by false and fraudulent representations to the said Thomas Sibson that the mare was unsound of her wind, and that she had been examined by a veterinary surgeon, who had pronounced her a roarer, and that he the said William Brown had sold her for 27*l.*, to induce and persuade the said Thomas Sibson to accept and receive from the said William Brown a much less sum of money in payment for the said mare than the said William Brown had agreed to pay the said Thomas Sibson for the same, and thereby to cheat and defraud the said Thomas Sibson of a large part, to wit, 12*l.*, of the price so agreed by the said William Brown to be paid to the said Thomas Sibson for the said mare, to the great damage of the said Thomas Sibson, and against the peace of our lady the Queen." It was proved, as alleged, that Thomas Sibson had sold a mare to Brown; that Brown stated that he was

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(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

about to take her to Preston fair; and Sibson agreed to trust him for the price till after the fair. The defendant afterwards conspired to send a false account of the mare to Sibson, and thereby to get him to forego part of the agreed price; and, in pursuance of the conspiracy, Carlisle wrote and sent the following letter to Sibson:—

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“Preston, Jan. 2, 1854.

*Conspiracy to
procure abate-
ment of price.*

“Mr. Sibson, Sir,—The mare I bought from you is unsound of her wind; she has been examined by a veterinary surgeon, and he has pronounced her a *roar*. On her account of her being *slope* when I bought her I could not examine her as to her wind. I *nough* request an answer by return of post what must be done with her. I could have sold the mare well *head* it not been for that defect. N.B.—Direct to William Brown, White Horse Inn, Preston.—I am yours respectfully,

WM. BROWN.”

Address of envelope, “Mr. Sibson, Grindsal by Carlisle in *hast*.”

In consequence of the letter Sibson went to Preston, and saw Carlisle, who stated that he had examined the mare, and that she was unsound, which he knew to be false. Sibson afterwards saw Brown, who told him that he had sold the mare for 27*l*. only (which was false), and persuaded Sibson to receive that sum in satisfaction of his claim; but no receipt or other discharge was given. For the defendants it was contended that no indictable offence had been proved or charged; for that the facts alleged in the indictment, and given in evidence, did not and could not alter the position of Sibson, inasmuch as the payment of the smaller sum was no satisfaction of the larger sum for which he had sold the mare to Brown, and consequently he might afterwards enforce payment of the residue, and could not be thereby cheated of the difference. The jury found the defendants guilty; but having doubts upon the point raised, the learned judge discharged them on bail, and requested the opinion of this court as to the legality of the conviction.

Whigham, for the prisoners.—There is no offence charged or proved; because this is not a conspiracy to effect an illegal object, or a legal object by unlawful means. The alleged object is to persuade Sibson to take 27*l*. for a debt of 39*l*., which could not be done. A smaller sum cannot be accepted in satisfaction of a larger: (*Cumber v. Wane*, 1 Smith's L. C. 146.)

POLLOCK, C. B.—It might if a release was given.

Whigham.—But there was no release given in this case; and the debt due to Sibson remained the same as if the defendants had made no representation to him at all.

ERLE, J.—May there not be a conspiracy by false pretences to obtain a gift?

PARKE, B.—That would be inducing a man to part with his property by false pretences.

Whigham.—Here the object could not be effected.

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POLLOCK, C. B.—Nor can it ever in the case of fraud, because the fraud vitiates the transaction.

ERLE, J.—If there is a conspiracy by unlawful means to accomplish a lawful object, it is indictable; are not these misrepresentations unlawful means?

Whigham.—This is no more than an attempt by a purchaser to get an abatement of price, by saying that he had made a bad bargain.

CROMPTON, J.—There is no case, I believe, which decides that a conspiracy to misrepresent the value of goods, even as between buyer and seller, would not be an indictable offence.

ERLE, J., referred to *R. v. Kenrick* (5 Q. B. 49.)

Whigham.—*R. v. Pywell* (1 Stark. N. P. C. 402) is more like this case.

ERLE, J.—That case was cited in *R. v. Kenrick*, but certainly not sanctioned as an authority.

Whigham.—In *R. v. Turner* (13 East, 228), a conspiracy to kill game was held not indictable.

POLLOCK, C. B.—Because the object was mere amusement; and not to injure the prosecutor.

Whigham.—Here the object was to get the prosecutor to take a smaller sum in satisfaction of a larger, which could not be done; and, even if the means were unlawful, still the offence is not indictable.

Judgment.

POLLOCK, C. B.—I believe that we are all of opinion that this indictment is sustainable, and that the facts proved in evidence sustain it; that the indictment is good in point of law, and proved by the evidence in point of fact. The substance of the charge is, that the prisoner used unlawful means, namely, the misrepresentation of facts, for the purpose of inducing the prosecutor to forego a claim. I own that I have never been able to perceive the force of the argument that, because the fraud could not accomplish the object, and the right of the prosecutor could not be altered thereby, therefore the indictment is not sustainable; because in no case is there any actual change of property where there is a change of possession procured by fraud. The fraudulent act need not be successful; and it was quite enough that, by false representations, the prosecutor was induced to say that he would accept the smaller sum. When two persons conspire together to do that which may not be unlawful in itself, but by unlawful means, they come within the legal definition of the offence of conspiracy, and must take the consequences.

Conviction affirmed.

CENTRAL CRIMINAL COURT.

MAY SESSION, 1854.

May 11.

(Before Mr. COMMISSIONER GURNEY.)

REG. v. DAVIS. (a)

Burglary—Breaking—Entering.

It is not sufficient to constitute the offence of burglary that there was an entry without a breaking of the outer door, and a breaking without an entry of an inner one.

THE prisoner was indicted for burglary.—It appeared in evidence that the loft of the house in which the offence was alleged to have been committed, had two doors, one in the roof above, the other communicating with the room below. There was no evidence to show any breaking of the door in the roof, but the one on the floor of the loft, leading into the lower room, had been wrenched off its hinges. There was no proof, however, that the person who had so broken the door had ever gone through it into the room below. On these facts,

Ribton (for the prisoner) submitted that the charge of burglary could not be sustained. The outer door was not broken; and, although there was a breaking of the inner one, there was no entry. The charge was breaking, and an entering by means of the breaking; but the evidence here was an entering first and a breaking afterwards.

Lilley (for the prosecution) contended that, as there was a breaking and entering, no matter which came first, the charge was proved.

Mr. COMMISSIONER GURNEY, having consulted Mr. Justice Cresswell in the adjoining court, held that the charge of burglary could not be sustained. To constitute the crime, the entry must be consequent upon the breaking.

The prisoner was convicted of an attempt to commit a burglary.

Lilley for the prosecution.

Ribton for the prisoner.

(a) Reported by B. C. ROBINSON, Esq., Barrister-at-Law.

COURT OF CRIMINAL APPEAL.

April 29, 1854.

(Before POLLOCK, C.B., PARKE, B., CRESSWELL, ERLE, and CROMPTON, JJ.)

REG. v. JOSEPH WHITEMAN. (a)

Malicious Trespass Act—Felonious injury to property—Value.

Upon an indictment for damaging trees and shrubs in a hedge to an amount exceeding 5l., a valuer proved that he estimated the injury to the trees at 1l., but that it would be necessary to stub up the old hedge, and that it would cost 5l. 14s. 6d. to replace it :

Held, that upon this evidence the indictment could not be sustained.

AT the Quarter Sessions for the West Riding of Yorkshire, the prisoner was found guilty, and sentenced to six months' imprisonment, upon an indictment which charged him with feloniously damaging two oak-trees, one ash-tree, one elm-tree, and one hundred thorn-shrubs, the property of Joseph Charlesworth and others, growing in a certain hedge there situate (elsewhere than in a park, pleasure-ground, garden, orchard, or avenue, or any ground adjoining or belonging to a dwelling-house), thereby then and there doing injury to the said J. C. and others to an amount exceeding the sum of 5l.

But the chairman reserved the following case :

Charles Turner, a sworn valuer, proved that he had valued the damage done to the trees and hedge at 5l. 14s. 6d. He stated it would be necessary to stub up the old hedge, and gave the following particulars of his valuation :

	£	s.	d.
Stubbing	0	15	0
Post and rails to protect new hedge	3	10	0
Quickwood, setting and cleaning	0	9	6
Injury to trees	1	0	0

£5 14 6

He further stated that he did not value the old hedge; he valued what it would cost to replace it; he could not value the old hedge, it was so dilapidated and burned. The court directed the jury that this was sufficient evidence of injury done to the amount of 5l. and upwards, as charged in the indictment. It was objected,

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

on the part of the prisoner, that, as the injury done must amount to 5*l*., and that as it must be injury done in respect of a growing tree, sapling, shrub, or underwood, there was no evidence of such injury beyond 1*l*.

Johnstone appeared for the prisoner.

Hardy, for the Crown, declined to argue in support of the conviction.

By the COURT.

Conviction quashed.

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—

COURT OF CRIMINAL APPEAL.

April 29, 1854.

(Before POLLOCK, C.B., PARKE, B., CRESSWELL, ERLE, and CROMPTON, JJ.)

REG. v. WILLIAM WALKER. (a)

Unlawful apprehension—Assault previously committed—Continuous pursuit—Danger of renewal.

A. committed an assault upon a constable, who, two hours afterwards, having obtained assistance, and when there was no danger of any renewal of the assault, attempted to apprehend him, and was wounded in the attempt:

Held, that his apprehension at that time was unlawful; and that he was improperly convicted of wounding the constable with intent to prevent his lawful apprehension.

THE following case was reserved by Cresswell, J.:—

Indictment for cutting and wounding Thomas Clarkson, with intent to disable; secondly, with intent to do some grievous bodily harm; thirdly, with intent to prevent the lawful apprehension of the prisoner.

Thomas Clarkson was a serjeant in the Lancaster constabulary force, and the prisoner a police constable under him.

In the evening of the 3rd January, Clarkson went, as was his duty, to the house of the prisoner, to see that he was correct in the discharge of his duty; the prisoner had some altercation with him, and Clarkson left the house; the prisoner followed and struck him, and fell when attempting to strike a second time. Clarkson then went away for assistance, returned to the prisoner's house

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

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with two police constables; the prisoner was not then at home; they returned again in two hours, and then saw him, and Clarkson told him that he must go with him to the Newton station; the prisoner said he would not stir an inch that night; Clarkson attempted to take hold of him, whereupon the prisoner struck him on the head with a clock-weight, and inflicted a severe wound. The jury found him guilty of wounding to prevent his lawful apprehension, and negatived the other intents charged. Having some doubt whether the apprehension was lawful, I did not pass sentence; and have to request the opinion of this court as to the propriety of the conviction. The prisoner could not find bail, and remains in custody.

The case was not argued by counsel.

POLLOCK, C.B.—We are all of opinion that this conviction cannot be supported. All that the jury have found is, that the prisoner assaulted the prosecutor with intent to prevent his lawful apprehension; but we are of opinion that his apprehension at that time was not lawful. The offence for which he might be apprehended—namely, the assault, was committed at another time and place; and there was no continued pursuit. The interference of the officer, therefore, was not for the purpose of preventing an affray, nor of arresting a person whom he had seen recently committing an assault; but the apprehension was so disconnected from the supposed justification of it, that that want of connection rendered it unlawful. So that in point of fact the apprehension was not lawful; and the prisoner could not be convicted of an assault with intent to resist his lawful apprehension.

PARKE, B.—According to *Timothy v. Simpson* (1 Cr. M. & R. 757) the officer might arrest if there was danger of the affray being renewed; but that is out of the question in this case.

CRESSWELL, ERLE, and CROMPTON, JJ., concurring,

Conviction quashed.

COURT OF CRIMINAL APPEAL.

June 3, 1854.(Before LORD CAMPBELL, C. J., ALDERSON, B., COLERIDGE, J.,
MARTIN, B., and CROWDER, J.)

REG. v. DAVID PRATT. (a)

*Larceny—Possession—Assignment for benefit of creditors—Stamp.**A., having executed an assignment of all his goods and effects to trustees for the benefit of his creditors, took to pieces some machines included in the assignment, and secretly removed them from the premises, with intent to defraud the creditors. But the trustees had not at that time taken possession; and the jury found that the property was not in the care and custody of A. as agent for the trustees.**Held, that A. was not guilty of larceny.**The deed, after it had been executed once, was re-executed by A. for the purpose of having the execution attested by an attorney, and preventing the deed from operating as an immediate act of bankruptcy under sect. 68 of the Bankrupt Law Consolidation Act:**Held, that the deed was admissible in evidence, though not restamped.*

THE prisoner was tried at the last January Sessions for the borough of Birmingham, upon a charge of having feloniously stolen, taken, and carried away on the 18th May, in the 16th year of our Sovereign Lady the Queen, one die lathe, the goods of Edward Barker and another; and on the 19th May, in the same year, ten lathes, the property of the said Edward Barker and another, the goods and chattels of the prosecutors; and was found guilty.

The prisoner was a thimble maker and manufacturer, carrying on his business in two mills, one a thimble mill, and the other a rolling mill, in the borough of Birmingham; and before the occurrence hereinafter mentioned, he was the owner and proprietor of the property mentioned in the indictment.

On the 14th May, 1853, the prisoner, being in pecuniary difficulties, arranged with the prosecutors, Edward Barker and William Wayte, creditors of the prisoner, and with Mr. Collis, an attorney-at-law, who acted on their behalf, to execute an assignment to trustees for the benefit of his creditors; and on the 18th May, a deed of assignment was executed by him, whereby the prisoner assigned to the prosecutors, as trustees for the purposes therein

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

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mentioned, certain property, by the description following:—All and every the engines, lathes, boilers, furnaces, horses, carts, machinery, tools, and implements of trade, the stock-in-trade, goods, wares, merchandise, household furniture, fixtures, plate, linen, china, books of account, debts, sum and sums of money, and all securities for money, vouchers, and other documents and writings, and all other the personal estate and effects whatsoever and wheresoever, save and except leasehold estates, of the said David Pratt, in possession, reversion, remainder, or expectancy, together with full and free possession, right and title of entry in and to all and every of the mills, works, messuages, or tenements and premises wherein the said several effects and premises then were: to have and to hold the said engines, and other the premises, unto the said William Barker and William Wayte, their executors, administrators, and assigns, absolutely.

The deed was executed by the prisoner in the presence of, and was attested by, James Rous, who was a clerk of Mr. Collis, and who was not an attorney or solicitor.

Case.

On the 29th May the said deed was again executed by the prisoner in the presence of the said Mr. Collis, and in all respects in conformity with the provisions of the 68th section of the Bankrupt Law Consolidation Act, 1849, with the view of preventing the deed from operating as an act of bankruptcy. The deed had been duly stamped on its first execution, but no second stamp was affixed on its second execution, which omission was made the ground of objection to its receipt in evidence. I admitted it, however, subject to the opinion of this honourable court, which I directed should be taken if it became necessary. At the time of the first interview with Mr. Collis on the 14th May, the prisoner said he had stopped work altogether, but on the 16th it was arranged between him and Mr. Collis that the rolling business should be allowed to go on to complete some unfinished work. Mr. Collis then told him to keep an account of the wages of the men employed on the rolling work, and to bring it to the trustees. This the prisoner did on the 19th May, when the wages were paid by the trustees, and the rolling business finally stopped.

In the nights of Monday, the 16th May, and of every other day during that week, the prisoner removed property conveyed by the deed—including the articles mentioned in the indictment—from the thimble and rolling mills (some of the heavier machines being taken to pieces for the purpose of removal), and hid them in the cellar and other parts of the house of one of his workmen. Some time afterwards, and after the sale by the trustees of the remainder of the property, a Mr. Walker, who had been a large purchaser at the sale, recommenced the business at the thimble and rolling mills, and the prisoner acted as his manager, when the property, which formed the subject of the indictment, was by the prisoner's directions brought back at intervals to the mills.

No manual possession of the property was taken by the prosecutors prior to its removal from and back to the mills, but the

prisoner remained in possession after the execution of the deed, in the same manner as before.

I asked the jury three questions:—1st. Did the prisoner remove the property after the execution of the deed of assignment?—2ndly. Did he so act with intent fraudulently to deprive the parties beneficially entitled under the deed, of the goods?—3rdly. Was he at the time of such removal in the care of and custody of such goods as the agent of the trustees under the deed?

I put these three questions to the jury separately, and they separately answered them, as follows: 1st. He did remove the property after the execution of the assignment.—2ndly. He did so remove it with fraudulent intent.—And lastly: He was not in the care and custody of the goods as the agent of the trustees, and thereupon (being of opinion that the two affirmative answers would support a conviction, notwithstanding the third answer in the negative), I directed the jury to find the prisoner guilty, which they did.

The questions for the opinion of the court are: 1st. Whether the deed of assignment ought to have been received in evidence? 2nd. Whether my direction to the jury was correct?—And lastly: Whether the conviction is valid?

Bittleston (Field with him) for the prisoner.—The conviction is wrong. 1st. The prisoner was in lawful possession of the goods, and a taking by him did not constitute larceny. *Furtum non est ubi initium habet detentionis per dominum rei*. The trustees had not even a constructive possession for this purpose; though they probably had for the purpose of maintaining a civil action of trespass against a third person. The doctrine of constructive possession underwent consideration in *R. v. Reed* (23 L.J. 25, M.C.), where a servant was sent to fetch coals; and it was held that the servant's possession was only determined when he had placed the coals in his master's cart, which was the same thing for that purpose as the master's warehouse. If this case is put upon the ground that the prisoner was a bailee and broke bulk, the jury have negatived a bailment. 2nd. Under the 68th section of the Bankrupt Act, the re-execution constituted a material alteration of the deed, which therefore required to be stamped. [LORD CAMPBELL, C.J.—Was not the re-execution a mere nullity?] Probably that is so.

A. Wills, contra.—This is a case of bailment. The trustees permitted the prisoner to continue in possession, and by so doing constituted him a bailee. [LORD CAMPBELL, C.J.—The jury have found the contrary.] They have only found that he was not their agent; and there is a distinction between an agent and a bailee.

LORD CAMPBELL, C.J.—It is found that he had not the care or custody of the goods as their agent; and that clearly negatives a bailment; and that is the only ground upon which this case could be put. The prisoner, therefore, was in lawful possession of the goods, and cannot be convicted of larceny.

ALDERSON, B.—This is the case of a man stealing goods out of his own possession.

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Conviction quashed.

COURT OF CRIMINAL APPEAL.

June 3, 1854.

REG. v. FEATHERSTONE. (a)

Larceny—Delivery of money by wife to adulterer.

Upon an indictment for larceny of money, it was proved that the prosecutor's wife delivered the money to the prisoner, with whom she eloped; and that, when he received it, the prisoner knew that she had taken it without the authority of her husband.

Held, sufficient evidence to sustain a conviction.

THE prisoner, George Featherstone, was tried at the last assizes holden at Worcester. The indictment charged him with stealing twenty-two sovereigns and some wearing apparel. It appeared that the prosecutor's wife had taken from the prosecutor's bed-room thirty-five sovereigns and some articles of clothing, and that when she left the house she called to the prisoner, who was in a lower room with the prosecutor and other persons, and said "George, it's all right; come on." Prisoner left in a few minutes after. The prisoner and the wife were afterwards seen together at various places, and eventually were traced to a public-house, where they passed the night together. When taken into custody, the prisoner had twenty-two sovereigns upon him. The jury found the prisoner guilty, stating that they did so "on the ground that he received the sovereigns from the wife, knowing that she took them without the authority of her husband." Whereupon the judge respited the judgment, admitted the prisoner to bail, and reserved for the opinion of the Court of Criminal Appeal the question, whether a delivery of the husband's goods by the wife to the adulterer, with knowledge by him that she took them without the husband's authority, was sufficient to maintain the indictment for felony against him?

No counsel appeared on either side.

The Court retired to consider their judgment.

LORD CAMPBELL, C.J.—We are clearly of opinion that the conviction was right. The general rule of law is, that the wife cannot be found guilty of larceny for stealing the goods of her husband; but that is so, because the husband and wife are regarded by the law as one person, and therefore the taking by the wife is not sufficient to constitute the offence; but that rule is properly qualified by this, that when she becomes an adulteress, she determines her quality of wife, and her property in the husband's goods

is not recognised. The prisoner was her accomplice, and on the finding of the jury he assisted her and received the sovereigns, knowing that the wife took them without her husband's consent. It is said in Russell on Crimes, 3rd ed. vol. 1, p. 23, that "a stranger cannot commit larceny of the husband's goods by the delivery of the wife; but a distinction is pointed out where he is her adulterer, for which Dalton's Justice, p. 504, is cited: "But it should be observed that if the wife steal the goods of her husband and deliver them to B., who knowing it carries them away, B. being the adulterer of the wife, this, according to a very good opinion, would be felony in B.; for in such case no consent of the husband can be presumed." That case is identical with the present; the prisoner here knew that the property he carried away was taken without the husband's consent: we think, therefore, that the conviction was right, and ought to be affirmed.

ALDERSON, B.—The wife could not be convicted, so as to make the two accomplices in the commission of the offence; but the adulterer cannot set up as a defence the delivery by her when he takes the goods with a knowledge of the circumstances which make it a larceny.

COLERIDGE, J., mentioned that, in a case tried before him at Oxford, a conviction had taken place under similar circumstances.

Conviction affirmed.

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STONE.
—
1854.
—
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Adulterer.*

COURT OF CRIMINAL APPEAL.

June 3, 1854.

(Before LORD CAMPBELL, C. J., ALDERSON, B., COLERIDGE, J., MARTIN, B., and CROWDER, J.)

REG. v. LARKIN. (a)

Indictment—Amendment after verdict.

An indictment for receiving alleged by mistake that the prosecutor, instead of the prisoner, knew that the goods were stolen. The defect was not noticed till after verdict, when a motion was made in arrest of judgment; but the Court below then amended the indictment:

Held, that the amendment could not be made after verdict; and that the indictment was bad, in arrest of judgment.

DENNIS LARKIN was indicted, in the first count, for stealing, on the 3rd May last, at Sheffield, 6lbs. weight of

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

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steel, the property of Abram Brooksbank; and the indictment contained a second count, which was in the following words:—

“And the jurors aforesaid, upon their oath aforesaid, do further present that the said Dennis Larkin afterwards, to wit, on the same day and year aforesaid, with force and arms at the parish of Sheffield aforesaid, in the riding aforesaid, the same 6lbs. weight of steel of the goods and chattels of the said Abram Brooksbank, then lately before feloniously stolen, taken, and carried away, then and there feloniously did receive, he the said Abram Brooksbank then and there well knowing the said last-mentioned goods and chattels to have been feloniously stolen, taken, and carried away, against the form of the statute in that case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.”

On the trial, no evidence was offered on the first count; but a verdict of guilty was returned on the second count, the error not having up to that time been observed by the court. To prove the *scienter*, counsel for the prosecution proposed to ask a witness for the prosecution whether he had ever sold goods at other times to the prisoner which he, witness, had stolen from other persons than the prosecutor. Counsel for the prisoner objected that the evidence was not receivable; objection allowed. In cross-examination counsel for the prisoner asked the witness, for the purpose of impeaching his credit, whether he had ever stolen anything before? Answer—yes. Question—how many times? Answer—between four and five. On re-examination, counsel for the prosecution proposed to ask the witness, for the purpose of proving that he had sold the scraps stolen on the said four or five occasions to the prisoner, what he had done with them? Objected to as before. Objection overruled; on the ground that the evidence was let in by the above cross-examination, and the witness then stated that he had sold the scraps stolen on former occasions to the prisoner. The opinion of the Court of Appeal is requested, whether the above-mentioned evidence was admissible, either in the first instance, or in consequence of the cross-examination of the witnesses by the prisoner's counsel. After the verdict had been recorded, the counsel for the prisoner moved that the judgment should be arrested, on the ground that the indictment did not allege any guilty knowledge in the prisoner. The counsel for the prosecution argued, first, that, as the objection had not been brought to the notice of the court by demurrer or otherwise before the jury had given their verdict, the counsel for the prisoner was not at liberty to move in arrest of judgment at the time when he did so move. Secondly, that the second count was good, it being allowable to reject the words “the said Abram Brooksbank” as surplusage, for which he cited *R. v. Morris* (1 Leach, C. C. 103.) Thirdly, that the indictment might be amended. The court were of opinion that the count was good as it stood; but they amended the indictment by striking out the words “Abram Brooksbank,” and substituting the words “Dennis Larkin” between the words “he the said” and the words “well knowing” in the second count,

so that it correctly alleged a guilty knowledge in the prisoner; and sentence was passed upon the prisoner, subject to the opinion of the Court of Criminal Appeal on the following questions:— First, whether the prisoner's counsel was at liberty to move in arrest of judgment at the time when he did move? Secondly, whether it was not allowable to reject the words "the said Abram Brooksbank" as surplusage, so that the second count was good as it originally stood? Thirdly, whether the court had power to amend the indictment in manner above stated? Fourthly, if the opinion of the Court of Criminal Appeal is that the conviction is bad, their opinion is further requested on the point whether a fresh indictment, correctly alleging the guilty knowledge, will lie against the prisoner.

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Heaton, for the prisoner.

LORD CAMPBELL, C.J.: (After reading 14 & 15 Vict. c. 100, s. 25.)—The question is whether, under that section, the want of the *scienter* in the second count is a formal defect amendable after verdict.

R. Hall, for the Crown.—The name of the prosecutor may be rejected as surplusage: (*R. v. Morris*, 1 Leach C. C. 103.)

LORD CAMPBELL, C.J.—You will have great difficulty in striking out the words "Abram Brooksbank" as surplusage. *R. v. Morris* was a different case; it was a mere misnomer. There was clearly no right to amend the count in this way after verdict. The indictment is clearly bad on the face of it, in not alleging the *scienter*; and the objection was taken at the proper time. We direct that the record be restored to its original state, and the conviction set aside. We may add, for the information of the magistrates, though it can hardly be necessary to do so, that a fresh indictment may be preferred against the prisoner for receiving the property knowing it to have been stolen; but not for stealing it.

Conviction quashed.

NORTHERN CIRCUIT.

YORK SUMMER ASSIZES, 1853.

(Before Mr. JUSTICE ERLE.)

REG. v. DUNDAS. (a)

False pretences—Spurious article—Trade marks.

An indictment for false pretences will be sustained by evidence that the prisoner had sold to the prosecutor blacking which he had asserted to be "Everett's Premier," and which bore a label nearly, but not precisely, imitating Everett's labels, the said blacking not being Everett's Premier, but a spurious manufacture of his own.

ON July 2 the prisoner went to Pocklington with a cart containing a number of blacking-bottles, labelled "Everett's Premier." Everett is a blacking maker in London, and that was a name given to a blacking of repute manufactured by him. Prisoner offered this blacking for sale to prosecutor, taking out a bottle and a brush, and proposing to prove its excellence; but the prosecutor was satisfied with his assertion, and, after some bargaining, during which prisoner offered to open any other bottle if prosecutor doubted whether they contained as good blacking as that he had produced, the prosecutor bought six dozen bottles. In making the sale the prisoner represented himself as the agent of Everett, who lives in King-street, Holborn, and said they had sent him the blacking in casks and allowed him to bottle it. The bottles had a label upon them calling the blacking "Everett's Premier," and imitating Everett's labels, with the only difference that the residence was stated at "Queen's-court," instead of "King's-court," and their not being signed at the foot.

The defence was that the prisoner sold the blacking on sale or return, and that consequently the prosecutor was not cheated, as he could send it back if not satisfied with it. As to the labels, they were not similar, and the prosecutor, by ordinary caution, might have protected himself.

His LORDSHIP, in his charge to the jury, said that the prisoner's offer to sell on sale or return might be intended to put prosecutor off his guard, but the actual bargain was for cash, which was paid, and the sale completed. With respect to the difference between the labels, the jury would consider whether it was a small and colourable difference only, and intended to deceive. It

(a) Reported by EDWARD W. COX, Esq., Barrister-at-Law, to whom it was communicated.

was of little consequence whether the man's name was Everett, as he had stated, or not, for even if it were, and he went about the country and offered blacking for sale as "Everett's Premier," representing it to be the well-known article of that name, knowing that it was not so, and intending to cheat the prosecutor by passing upon him a spurious article as the true one, his conduct was equally fraudulent.

The jury found the prisoner *Guilty*, and he was sentenced to two years' imprisonment.

Overend and *Shepherd* for the prosecutor.

Dearsley for the prisoner.

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v.
DUNDAS.
—
1854.
—
*False
pretences.*

Ireland.

COURT OF CRIMINAL APPEAL.

June 25, 1854.

(Before MONAHAN, C. J., TORRENS, BALL, and MOORE, JJ.,
and GREENE, B.)

REG. v. PATRICK BRENNAN. (a)

*Indictment for rescue—Distress for poor rate—Validity of rate—
Warrant to collect—Evidence.*

The proper mode of stating a case for the opinion of the court, is to submit some point or points of law for its consideration, and not to seek the decision of the court on the evidence generally, as to its sufficiency to support a conviction.

In an indictment for a rescue of property distrained by a poor rate collector, it is not necessary to prove the making of the rate, or that there is any sum due at the time of the distress, but the warrant to collect, if in the form and with the requisites required by the Poor Law Act, will be sufficient prima facie evidence of the authority of the collector.

The section which requires the sum to be collected to be specified in the warrant, is satisfied by a reference in the warrant to the collector's book delivered at the time to the collector, and by such reference the book becomes incorporated with the warrant.

THE following case was stated by the Assistant Barrister of the county of Wexford, for the opinion of the Court.

The traverser was tried for a rescue and assault before me, at the last Quarter Sessions for the county Wexford, at Enniscorthy, upon the 1st of April, 1854.

(a) Reported by P. J. M'KENNA, Esq., Barrister-at-Law.

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v.
BRENNAN.
1854.
Practice—
Indictment—
Rescue.

The indictment for rescue charged that the traverser, on the 20th February, with force of arms, &c., at Monasuthagh, did unlawfully rescue from and out of the custody and possession and against the will of one Michael Finn, then and there in due form of law taken and distrained by the said Michael Finn, the sum of 18s. 8d., then due for poor rates of the lands of the Monasuthagh, &c., against the peace, &c. The indictment for an assault upon Michael Finn was in the common form. The prisoner having been arraigned pleaded not guilty, and consented to be tried upon both indictments together. Having been given in charge to the jury, Michael Finn was sworn, and stated that he was collector of poor rates for the Kilcomby division of the Gorey Union, in which the lands of Monasuthagh were situate. He then produced a warrant, with a collector's book annexed, both of which he had received from the guardians of the Gorey Union.

The warrant was as follows:—

General Warrant to collect and levy Poor rate, Gorey Union.

To Mr. Michael Finn, collector of poor rates for the Kilcomby division of the above union.

Gorey Union. { You are hereby authorized and directed to levy the several poor rates, and arrears of poor rates, in the annexed book set forth, from the several persons therein rated, or other persons liable to pay the said rates and arrears of rates, by all such ways and means as by law you are empowered to use in levying of said rates.

By the guardians of the poor of the said union, at a meeting of the Board, held at the board-room on the 10th day of September, 1853.

COURTOWN { Chairman of the Meeting. Signed on behalf of the majority.

ROBERT SYMES

RICHARD HIGGINBOTHAM

} Guardians present.

W. H. HIGGINBOTHAM, Clerk of the Union.

He further proved the several signatures to the warrant, and that the persons who had signed were acting before, at, and subsequent to its date, in the respective capacities the warrant represented them to fill. That Daniel Brennan appeared to be rated in his book for the lands of Monasuthagh at 18s. 8d., that he had been acting as collector under the above warrant, and had repeatedly, before the day of seizure, demanded the above rate from Daniel Brennan. That on the 20th of February he had seized, as a distress for that rate, six goats, the property of Daniel Brennan, and that an offer had been made by Daniel Brennan to pay the amount if he (Finn) would give a receipt for a former rate, which had been paid after having been the subject of a previous rescue by Brennan. That he offered to give the receipt upon Brennan sending to his (Finn's) house, and that the rate of 18s. 8d. not having been paid,

he read his warrant for collection (as above) to Daniel Brenan and the traverser, who is his son.

Michael Finn then detailed the mode of rescue and assault, and other witnesses were examined for the prosecution and defence. The assault formed portion of the rescue.

The attorney for the traverser called upon me to direct an acquittal, upon the ground that sufficient evidence had not been given that any rate was legally due at the time of seizure, none having been offered of the due making of the rate.

On the part of the prosecution it was admitted that no further evidence as to the legality of the rate was then in the power of the Crown; but it was insisted that proof of the execution of the warrant by the proper legal parties was sufficient *prima facie* evidence of the legality of the rate which it empowers the collector to levy, and a dictum of Baron Pennefather's to that effect, at a previous assizes of Wexford in a similar case, was cited and relied on. No evidence impeaching the legality of the rate was offered before me; I reserved the point, and took the opinion of the jury upon the facts. The prisoner was found guilty of the rescue and assault, and sentenced by me to two months' imprisonment, but under 11 & 12 Vict. c. 78, I respited execution of the judgment, and allowed him to stand out on bail until the next quarter sessions for the County of Wexford, to be held at Gorey, on the 23rd of June, in order that the case might be submitted to the consideration of the justices of either bench, and the barons of the Exchequer, and to obtain their judgment upon the following question of law, viz:—

Whether upon the above facts there was sufficient evidence of a legal authority to seize for poor rates?

M. R. SAUSSE,

Assistant Barrister, County Wexford.

Curran (for the traverser).—Firstly, there was no evidence of any rate having been made, or of any liability on the part of the person distrained upon. Secondly, the collector's book was not proved by calling any witness, in the usual way for proving such documents. Again, the warrant is insufficient, as it does not appear that it was under date, or that it contained any specified sum to be levied.

GREENE, B.—If you can establish that the warrant was insufficient, it will be sufficient for you: you had better therefore apply yourself to that point first.

Curran.—It does not specify the gross amount of the rates as required by the act, and it is not under seal: these are both fatal objections. [MONAHAN, C. J.—You have no right to go into that latter objection, it does not appear that it was taken on the trial.] When it is not expressly stated to be under seal, the presumption should be in our favour; and the assistant barrister, by asking the opinion of the court as to whether, on the facts stated by him, there was sufficient evidence, has left this point open to

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me. [GREENE, B.—I must express my objection to assistant barristers asking us generally, on the facts stated, whether there was sufficient evidence to support a conviction, and thus letting in such controversies as the present. This is not what they are authorized to do by the act giving them jurisdiction to state cases for this court. They are to select some legal proposition for this court to decide upon that should be explicitly stated and the argument confined to that single point.] [MONAHAN, C. J.—If you press this point about the sealing of the warrant we shall send the case back to be amended.] The rate-book proves itself, but the collector's book, which has not been proved, was useless for any purpose of evidence. [MONAHAN, C. J.—That book, by the reference to it in the warrant is, in fact, a schedule to the warrant. Here we have a rate-book specifying what each person is to pay, and a warrant to levy according to that book; it is the same as if there were a separate warrant to levy each sum there specified.] The collector should have shown that there was something due. *Non constat* that this was a legal rate: in *Lord Lucas's case* they proved the making of the rate as required by the act. In *Regina v. Pigot* (1 Ir. C. Law Rep. 471), it was held that the court may inquire into the legality of the rate, and that if the necessary preliminary had not been observed, the prisoner was not liable for rescuing his goods.

TORRENS, J.—That case turned upon the construction of the Grand Jury Act, and cannot affect the present question, as that Act is quite different from the Poor Law Act.

MONAHAN, C. J.—With regard to *Lord Lucas's case*, that was a civil action for the recovery of rates, and it was necessary to prove that the rate was actually and legally made. But this is a criminal proceeding for assaulting a man for doing that which the act of Parliament and his duty required him to do.

The *Attorney-General*.—I should be prepared to admit that the traverser could have succeeded in a *replevin* in getting back his property.

The *Attorney-General* and *Corballis*, Q. C., for the Crown, were not called upon.

BY THE COURT.—This conviction must be affirmed.

CENTRAL CRIMINAL COURT.

(Before Mr. JUSTICE CRESSWELL.)

REG. v. REBECCA TURTON. (a)

Murder.

Where a jury is impanelled, at the instance of the counsel for a prisoner, to try whether he is insane or not at the time when brought up to plead to an indictment, the proof of the insanity is incumbent on the counsel for the prisoner.

REBECCA TURTON was indicted for the wilful murder of Thomas Turton.

When brought up to plead to the indictment,

Sleigh, for the prisoner, suggested that she was not in a sane state of mind, and therefore not competent to plead.

A jury was sworn to try the question of the prisoner's sanity.

CRESSWELL, J.—Mr. *Sleigh*, you suggest that the prisoner is insane. Do you offer any evidence?

Sleigh.—I submit that I am not obliged to do so. The prosecution should prove her sanity. *Reg. v. David Davis and another* (3 C. & K. 328), tried before Mr. Justice Williams, is in point. In that case the learned judge decided that it was the duty of the counsel for the prosecution to prove the prisoner's sanity and capability to plead. The learned judge is reported to have said, "I do not consider this so much an issue joined, as a preliminary inquiry for the information of the court."

Cooper, for the Crown, was not called on.

CRESSWELL, J.—Why is a man to be presumed *insane* when called upon to plead? The presumption is that he is sane. I do not see any sufficient reason for deviating from the old practice. If you suggest that the prisoner is not in such a state of mind as to be able to plead to the indictment, you must give evidence of the fact.

Sleigh then called the medical officer and chaplain of the gaol, who stated their opinion that the prisoner was of unsound mind.

The jury found the prisoner insane, and unable to plead.

W. R. Cooper for the prosecution.

Sleigh for the prisoner.

(a) Reported by B. C. ROBINSON, Esq., Barrister-at-Law.

HOME CIRCUIT.

HERTFORD ASSIZES, 1854.

July 14.

(Before Mr. JUSTICE ERLE.)

REG. v. YSCUADO.(a)

Murder—Assigning counsel—Interpreting evidence.

On a trial for murder, the court refused to allow counsel to appear for a prisoner without his expressed assent.

On the trial of a foreigner who did not understand the English language, the judge allowed the evidence of each witness to be completed before any portion of it was interpreted to the prisoner. It was then read over to him by the judge, that he might be afforded the opportunity of cross-examining.

THE prisoner was indicted for wilful murder. When called upon to plead, no word or sign could be elicited from him, and the jury were sworn to try whether he stood mute of malice or by the visitation of God. Evidence was then given to the effect that on his first admission to the gaol (nearly twelve months since) he had talked in Spanish with a person sent from the Spanish Embassy to assist him in his defence, but at the end of a fortnight he had declared he would never speak again, and from that time he had never uttered a word. The evidence of the jailor and of the surgeon, showed that, in their opinion, he was neither deaf nor dumb.

ERLE, J., then addressed the prisoner through an interpreter, explained to him the nature of the immediate enquiry, and read over to him the evidence that had been adduced. The prisoner remained silent, and the jury returned a verdict that he stood mute of malice.

The learned judge then ordered a plea of *Not guilty* to be entered.

He was then asked whether he would be tried by a jury of Englishmen, or by a jury *de medietate linguæ*. No answer being returned an English jury was then sworn.

Rodwell (who was for the prosecution), then suggested that under the peculiar circumstances of the case, counsel should be assigned to the prisoner, and Parry volunteered to defend him.

The prisoner was asked whether he wished to have the services of counsel to defend him, but no reply was given.

(a) Reported by B. C. ROBINSON, Esq., Barrister-at-Law.

ERLE, J.—I do not think that I have any authority to assign counsel to a prisoner without his consent. I should be very glad if I could do so, but by allowing counsel to appear without any communication with the prisoner, and without his sanction, I might be authorizing a defence which the prisoner himself would never have made, and yet for which he must be responsible.

Parry suggested that as the jury had already found that the prisoner stood mute of malice, it was to be presumed that he fully understood all that was interpreted to him, and if on being told that a certain counsel had been assigned by the court to conduct his defence, he did not repudiate him, it might be taken that he assented to such a course.

ERLE, J.—He is not bound to give any assent to such a proposition, and I do not see how I can infer an assent from his silence. In treason, by a special act of Parliament, the court may assign counsel to a prisoner, but then it can only be done at his own request. The trial must proceed, and care being taken that the prisoner is made acquainted with all that transpires, he must pursue his own course.

A discussion subsequently arose as to whether each question and answer should be interpreted to the prisoner, or whether, when the evidence of each witness was concluded, the whole should be read over to him to afford an opportunity for cross-examination.

The learned judge thought the latter course the more convenient one; he had known it adopted in several cases, and, accordingly, that course was pursued.

Verdict—Guilty.

Rodwell for the prosecution.

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HOME CIRCUIT.

SURREY ASSIZES, 1854.

August 7.

(Before Mr. JUSTICE ERLE.)

REG. v. BERRIMAN.(a)

Concealment of birth—Period of gestation—Questioning prisoners by police officers—Questioning by magistrates—Evidence.

Where there is no clear evidence of an offence having been committed, a police officer is not justified, in consequence of mere rumours in a neighbourhood, in putting searching questions to a person for the purpose of eliciting the proof of a crime, as well as of that person's connection with it.

After the investigation before a magistrate on a charge of concealment of birth, and after the accused had been cautioned in the usual manner, and had stated that she had nothing to say, but before her actual committal, the presiding magistrate asked her what she had done with the body of the child:

Held, that her statement in answer was not admissible; nor would the learned judge allow a witness to be asked whether, "in consequence of such statement," he did a particular thing.

On a charge of concealment of birth, it must appear that the child had gone such a time in its mother's womb that it would, in the ordinary course of things, when born, have had a fair chance of life. Under seven months it may be fairly presumed that it would not be born alive.

THE prisoner was indicted for concealing the birth of her child. It appeared in evidence that, in the neighbourhood in which the prisoner lived, rumours were afloat that she had been delivered of a child; the only ground for such suspicion being, that she was observed, up to a certain period, to increase in size, and that she had afterwards suddenly recovered her usual form.

In consequence of these rumours, a police officer went to her, charged her with having been recently delivered, and with having murdered the child, or at least concealed its birth. The result of his questioning was that she made a certain statement to him which he now detailed in evidence to the jury.

ERLE, J. (observing upon this evidence)—I very much disap-

(a) Reported by B. C. ROBINSON, Esq., Barrister-at-Law.

prove of this proceeding. By the law of this country, no person ought to be made to criminate himself, and no police officer has any right, until there is clear proof of a crime having been committed, to put searching questions to a person for the purpose of eliciting from him whether an offence has been perpetrated or not. If there is evidence of an offence, a police officer is justified, after a proper caution, in putting to a suspected person interrogatories with a view to ascertaining whether or not there are fair and reasonable grounds for apprehending him. Even this course should be very sparingly resorted to. But here there was nothing whatever to show that any offence had been committed by any one—no finding of any body—no sign of delivery—no marks of blood—not the slightest indication in fact to point to crime, and then it is sought, by questioning the prisoner on the subject, to establish from her own lips the crime itself, as well as her guilty connection with it. What has been done here I have every reason to believe was done from no improper motive. It was, doubtless, an error of judgment, but I wish it to go forth amongst those who are inferior officers in the administration of justice, that such a practice is entirely opposed to the spirit of our law.

It further appeared that, on the investigation before the magistrate, after the prisoner had been cautioned in the usual manner, and had stated that she had nothing to say, the presiding magistrate, before committing her, asked her where she had put the body of the child.

Lilley (for the prisoner,) objected to her answer being received in evidence. The question was clearly an improper one. The magistrate had no right to interrogate the prisoner at all, except in the terms of the act of Parliament, and therefore, any answer given by her under such circumstances ought not to be admitted.

Locke (for the prosecution,) submitted that the statement was at all events evidence. She might have declined to answer the question, but having answered it, such answer could not be shut out. The magistrate had not, at the time, committed her for trial, and the question might have been put with a view to guide him in the exercise of his discretion, as to committing her or not.

ERLE, J.—I shall certainly refuse to allow any such evidence to be given. The question ought never to have been put, and it would be very unfair towards the prisoner to receive in evidence an answer so irregularly elicited.

Locke then proposed to put to a witness a question, whether in consequence of the answer she had given to the magistrate, he had made a search in a particular spot, and had found a certain thing.

ERLE, J.—No! *Not in consequence of what she said.* You may ask him what search was made, and what things were found, but under the circumstances, I cannot allow that proceeding to be connected with the prisoner.

Evidence was then given that on searching a certain spot, some bones were found half calcined, and a surgeon deposed that in his

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judgment they were those of a child, of which the mother must have gone from seven to nine months. This evidence, connected with the statement the prisoner had made to the policeman, that she had been delivered of a child and had burnt the body, formed the evidence for the prosecution.

Lilley submitted that there was no case to go to the jury; that even if they could be asked to presume that she was the mother of the child whose bones had been produced, there was no clear and substantial proof that the fœtus had arrived at that period of maturity that it could have been a living child.

ERLE, J., thought that there was enough to go to the jury, and afterwards, in summing up the case, thus laid down the law on the point mooted by the learned counsel :—

This offence cannot be committed unless the child had arrived at that stage of maturity at the time of birth, that it might have been a living child. It is not necessary that it should have been born alive, but it must have reached a period when, but for some accidental circumstances, such as disease on the part of itself or of its mother, it might have been born alive. There is no law which compels a woman to proclaim her own want of chastity, and if she had miscarried at a time when the fœtus was but a few months old, and therefore could have had no chance of life, you could not convict her upon this charge. No specific limit can be assigned to the period when the chance of life begins, but it may, perhaps, be safely assumed that under seven months the great probability is that the child would not be born alive.

Verdict—Not guilty.

Locke for the prosecution.

Lilley for the defence.

WESTERN CIRCUIT.

DORSET SPRING ASSIZES, 1853.

REG. v. —.(a)

Practice—Amendment—Variance.

Where an indictment for concealing the birth of a child alleged the concealment to have been in and among a certain heap of carrots, and the evidence was, that the body was laid upon the heap, but behind it, so that it was hidden from the passers by the upper part of the heap : Semble, that the evidence did not support the indictment.

Held, that the provision of sect. 1 of 14 & 15 Vict. c. 100, empowering the judge to amend certain variances between the indictment and the evidence did not extend to such an amendment as this.

PRISONER was indicted for concealing the birth of her child, by placing it on and among a certain heap of carrots.

The evidence was, that the carrots were in a conical heap, and that the body was placed on the back of the heap of carrots, so that the middle of the heap hid, by its height, the body from the view of passers by.

CROMPTON, J., expressed a strong doubt whether this sustained the allegation of concealment in and among the carrots.

Edwards (for the prosecution), contended that the proof was sufficient, but if it was the opinion of his lordship that it was not, he would apply to the judge to amend under sect. 1 of 14 & 15 Vict. c. 100, which empowers the judge to amend any variances between the statement in such indictment and the evidence offered in proof thereof, "in the name or description of any matter or thing whatsoever" in the indictment named or described, the word "matter," meaning, as he contended, any circumstances narrated, as "thing," meant any subject or object named.

CROMPTON, J., was of opinion that under the section he had not jurisdiction to make the amendment.

The prisoner was acquitted.

Edwards for the prosecution.

Ffooks for the prisoner.

(a) Reported by EDWARD W. COX, Esq., Barrister-at-Law, to whom it was communicated.

OXFORD CIRCUIT.

MONMOUTHSHIRE SPRING ASSIZES, 1853.

Monmouth, March 31.

(Before Mr. JUSTICE TALFOURD.)

REG. v. SPOONER.(a)

Wounding—Stat. 7 Will. 4 & 1 Vict. c. 85, s. 4—Indictment—Injury.

To constitute the offence of wounding with intent to do grievous bodily harm, under the stat. 7 Will. 4 & 1 Vict. c. 85, s. 4, the wound must be direct, and therefore an injury occasioned by the prosecutor falling on some iron trams in consequence of a blow from the prisoner, is not within the statute.

RICHARD SPOONER was indicted for feloniously wounding Alfred Williams, on the 28th of December, 1852, with intent to do him some grievous bodily harm.

The evidence against the prisoner was, that he, in consequence of some ill feeling entertained towards the prosecutor, attacked the latter while at work on a tram road, and knocked him down with a stick, inflicting a serious wound. On the part of the prisoner it was contended that the injury was occasioned by the prosecutor falling on the iron trams.

TALFOURD, J.—In summing up, told the jury, that in order to convict the prisoner of the offence charged in the indictment, the wound must be direct, and if they should be of opinion that the injury was the result of a fall, although occasioned by a blow from the prisoner, that would not be sufficient, for it would not be within the statute.*

Verdict—Not guilty.

[It had been previously held, that where in self-defence the prosecutor forced a part of his body against an instrument in the defendant's hands, and so cut and wounded himself, it was not within the statute; (*Reg. v. Becket*, 1 M. & Rob. 526.)—J. E. D.]

* 7 Will. 4 & 1 Vict. c. 85, s. 4, which enacts, "that whosoever unlawfully and maliciously shall shoot at any person, or shall, by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall stab, cut, or wound any person, with

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

intent, in any of the cases aforesaid, to maim, disfigure, or disable such person, or to do some other grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of his or her natural life, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years."

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BERKSHIRE SUMMER ASSIZES, 1853.

Abingdon, July 9.

(Before Mr. JUSTICE CROMPTON.)

REG. v. KIRTON.(a)

Perjury—Jurisdiction of justices over beer-houses—Sale of beer on Sundays.

Justices of the peace have power to control the sale of beer, &c., on Sunday, as well in unlicensed as in licensed houses.

An indictment against one W. K., for perjury, alleged that one J. H. was duly licensed to keep a beer-house, and that an information had been laid against him for unlawfully keeping it open on Sunday, the 6th of February, and that on the hearing of the said information the defendant falsely swore that he was not in the beer-house. There was no evidence that at the time of the alleged offence J. H. was a licensed beer-house keeper.

Held, that such proof was unnecessary, as the justices had a general jurisdiction over the subject of keeping such houses open on Sundays independently of any licence.

WILLIAM KIRTON was indicted for having committed perjury at the Petty Sessions, at Reading, on the 26th of March, 1853.

The indictment alleged that one Isaac Horn was duly licensed to keep a beer-house, and that an information had been laid against him, for that he being duly licensed to keep a beer-house, had it open unlawfully on the morning of Sunday, the 6th of February, 1853, and that on the hearing of the said information it became and was a material question whether the defendant William

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

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Kirton had been in the beer-house on that morning, and whether he had been supplied with beer on that occasion, and whether he had been seen going into and coming out of the house. The indictment then averred that the defendant falsely and corruptly swore that he had not been supplied with beer in the house, and that he was not in the house at all on the 6th of March, and was not seen going in or coming out of it.

In order to prove the averment in the indictment that Horn was duly licensed to keep a beer-house, he was called as a witness, and produced a licence, but on examination it appeared to be a licence for a year, commencing on the 11th of May, 1853. The witness proved that he was keeping the beer-house at the time of the alleged offence, on the 6th of February, 1853.

At the close of the case for the prosecution—

J. J. Williams (for the prisoner), objected that there was no evidence to support the averment in the indictment that Isaac Horn was duly licensed on the 6th of February. That was a material allegation, for without that proof, it did not appear that the justices had any jurisdiction to inquire whether Horn kept the house open on that day, and therefore, as the case now stood, the deposition of the defendant was sworn before a tribunal not competent to administer an oath, and it was *coram non judice*.

CROMPTON, J., held that the justices had jurisdiction generally over the subject of keeping houses for the sale of beer and other liquors open on Sunday, and that as in order to establish an offence, it was not necessary to prove that the keeper of the house was licensed, what was sworn on the subject of Horn's keeping the house open brought the case within the jurisdiction of the justices, even if it turned out that he was not licensed at the time. The learned judge said he was so satisfied of the correctness of his decision, that he should not reserve the case for the consideration of the Court of Criminal Appeal.

The defendant was acquitted.

OXFORD CIRCUIT.

STAFFORDSHIRE SUMMER ASSIZES, 1853.

Stafford, July 22.

(Before Mr. JUSTICE CROMPTON.)

REG. v. HARTSHORN AND OTHERS.(a)

Forgery at common law—Attestation of voting papers—Board of Health Act (11 & 12 Vict. c. 63)—Trial together of several misdemeanants, indicted separately.

The Board of Health Act, 11 & 12 Vict. c. 63, directs that the votes for the election of members of local boards shall be given by means of voting papers, and enacts (sect. 25), "that if any voter cannot write, he shall affix his mark at the foot of a voting paper in the presence of a witness, who shall attest and write the name of the voter against the same, as well as the initials of such voter against the name of every candidate for whom the voter intends to vote." The defendants who took an active part on behalf of some of the candidates, went to the houses of voters who were marksmen, to assist in filling up the voting papers, and having obtained the express or implied consent of voters or members of their families, filled up the papers with the proper names and marks of the voters, and put their own names as attesting witnesses without obtaining the actual signatures or marks of the parties themselves.

Held, that this did not constitute the offence of forgery at common law.

Quære, whether the irregularity amounted to an indictable misdemeanor.

The defendants having been indicted separately, Crompton, J., on the application of their counsel, and with the consent of the counsel for the prosecution, permitted all the cases to be tried.

THE indictment against Samuel Hartshorn, contained five counts. The first count alleged, that before and at the time of the commission of the offence hereinafter mentioned, the hamlet of Sneyd, in the county of Stafford, formed and was part of a district into which "The Public Health Act, 1848," had been and was applied and put in full force and operation according to and in pursuance of the provisions of the said act, and for which said district a local board of health, called The Burslem Local Board of Health, had been formed; and that before and at the time of the commission of the said offence, an election of one person for the said hamlet of Sneyd, to be a member of the

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

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said Burslem Local Board of Health, was about to take place according to the provisions of the said act, and that before and at the time aforesaid, two persons, being a number exceeding the number of persons to be elected at the said election for the said hamlet of Sneyd, that is to say, Joseph Edge and Thomas Massey, had been and were respectively and duly, and according to the provisions of that act, qualified and nominated to be elected as members of the said Burslem Local Board of Health, for the said hamlet of Sneyd, and that upon such nomination as aforesaid, and before the time of the commission of the offence hereinafter next mentioned, the chairman of the said Burslem Local Board of Health, to wit, John Pidduck, caused voting papers, in the form contained in Schedule A, to the said act annexed, to be prepared and filled up according to the provisions of the said act, and inserted therein the names of the said two candidates aforesaid, so nominated as aforesaid, according to and in pursuance of the provisions of the said act; and before the commission of the said offence, and three days before the day fixed for the said election, the said chairman, according to, and in pursuance of the said act, caused one of such voting papers to be delivered by certain persons duly appointed for that purpose, whose names are to the jurors aforesaid unknown, at the address in the said hamlet of Sneyd, of each owner and proxy, and at the residence of each rate-payer of the said hamlet of Sneyd, entitled to vote therein, at the said election, and amongst others, at the residence of one George Garner, then being a rate-payer, resident in the said hamlet of Sneyd, and duly qualified and entitled to vote therein for the election of members of the said Burslem Local Board of Health, for the said hamlet of Sneyd, at the said election, and which said last-mentioned voting paper was as follows, that is to say:

LOCAL BOARD OF HEALTH, 1852.

VOTING PAPER.

District of Sneyd.

No. of Voting Paper.	Name and Address of Voter.	Number of Votes.	
		As Owner.	As Ratepayer.

Directions to the Voter.

The voter must write his initials against the name of every person for whom he votes, and must sign this paper.

If the voter cannot write he must affix his mark, but such mark must be attested by a witness, and such witness must write the initials of the voter against the name of every person for whom the voter intends to vote.

If a proxy vote, he must in like manner write his initials, sign his own name, and state in writing the name of the corporation or company for whom he is proxy.

This paper must be carefully preserved by the voter, as no second paper will be given. When filled up it must be kept ready for delivery to Samuel Wooton, who will call for the same on the twenty-fifth day of September, 1852. No other person is authorized to receive the voting papers.

If the voting paper be not ready for the person appointed to collect it when called for, the vote will be lost. It will also be lost if more than one name be returned in the list with the initials of the voter placed against such name; or if the voting paper be not signed by the voter, or if the mark of the voter be not attested when attestation is required—

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Initials of the Voter against the Name of the Person for whom he intends to Vote.	Name of the Persons nominated.	Residence of the Persons nominated.	Quality or Calling of the Persons nominated.	Names of the Nominators.	Address of the Nominators.
1.	Joseph Edge ...	Hamill-cottage...	Manufacturer	John Dean George Slater ... Elijah Hughes ... N. P. Wood William Davenport	Hamill. St. John's-square Bleakhill. Burslem. Longport.
2.	Thomas Massey	Moorland-road ...	Gentleman ...	George Wigley...	Field-place, Stone

I vote for the person in the above list against whose name my initials are placed.

Signed _____

Or the mark of _____

Witness to the mark _____

And the jurors aforesaid, upon their oath aforesaid, do further present that Samuel Hartshorn, unlawfully and maliciously contriving to injure and defraud the said George Garner and the said Joseph Edge, on the first day of September, in the year of our Lord one thousand eight hundred and fifty-two, unlawfully, knowingly, falsely and fraudulently, after the delivery of the said voting paper at the residence of the said George Garner, and before the day fixed for the said election, did alter the said voting paper, by unlawfully, knowingly, falsely and fraudulently insert-

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ing, forging and counterfeiting the initials of the said George Garner, on the said voting paper, against and opposite to the name of the said Thomas Massey, in the said voting paper, and by unlawfully, knowingly, falsely and fraudulently adding, subscribing, forging and counterfeiting the name and signature of the said George Garner, to and upon the said voting paper, so as to make the said voting paper appear and purport to be the vote of the said George Garner for the said Thomas Massey, to be elected at the said election to be a member of the said Burslem Local Board of Health, with intent to defraud, and which said last-mentioned voting paper, so unlawfully, knowingly, falsely and fraudulently altered, forged and counterfeited as aforesaid, is as follows: that is to say,

LOCAL BOARD OF HEALTH, 1852.

VOTING PAPER.

District of Sneyd.

No. of Voting Paper.	Name and Address of Voter.	Number of Votes.	
		As Owner.	As Ratepayer.
103	George Garner, Hamill	1

Directions to the Voter.

The voter must write his initials against the name of every person for whom he votes, and must sign this paper.

If the voter cannot write he must affix his mark, but such mark must be attested by a witness, and such witness must write the initials of the voter against the name of every person for whom the voter intends to vote.

If a proxy vote, he must in like manner write his initials, sign his own name, and state in writing the name of the corporation or company for whom he is proxy.

This paper must be carefully preserved by the voter, as no second paper will be given. When filled up, it must be kept ready for delivery to Samuel Wooton, who will call for the same on the twenty-fifth day of September, 1852. No other person is authorized to receive the voting papers.

If the voting paper be not ready for the person appointed to collect it when called for, the vote will be lost. It will also be lost if more than one name be returned in the list with the

initials of the voter placed against such name; or if the voting paper be not signed by the voter, or if the mark of the voter be not attested when attestation is required—

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Initials of the Voter against the Name of the Person for whom he intends to Vote.	Name of the Persons nominated.	Residence of the Persons nominated.	Quality or Calling of the Persons nominated.	Names of the Nominators.	Address of the Nominators.
1.	Joseph Edge ...	Hamill-cottage...	Manufacturer	John Dean George Slater ... Elijah Hughes ... N. P. Wood William Davenport	Hamill. St. John's-square Bleakhill. Burslem. Longport.
G. G. 2.	Thomas Massey	Moorland-road ...	Gentleman ...	George Wigley ...	Field-place, Stone

I vote for the person in the above list against whose name my initials are placed.

Signed _____

Or the mark of + GEORGE GARNER.

Witness to the mark, SAMUEL HARTSHORN.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said Samuel Hartshorn, afterwards, on the said first day of September, in the year aforesaid, the said voting paper, so unlawfully altered and forged as aforesaid, did unlawfully, knowingly and fraudulently utter, offer, publish and put off as and for the true and real vote of the said George Garner, with intent to defraud (he the said Samuel Hartshorn, then well knowing the said last-mentioned voting paper to be forged, altered and counterfeited as aforesaid); against the peace of our Lady the Queen, her crown and dignity.

The second count was similar to the first, except that the voting papers were not set out, and the offence was charged to be the forging "a certain document partly printed and partly written, purporting to be the vote of the said George Garner, for the said Thomas Massey to be a member of the said Burslem Local Board of Health, for the said hamlet of Sneyd, with intent to defraud."

In the third count the defendant was charged with knowingly uttering the forged document mentioned in the second count, as and for the true and real vote of the said George Garner, with intent to defraud.

The fourth count, after reciting, as in the first and second counts, the establishment of the local board, the election, and the delivery of voting papers, alleged that the defendant, together with one

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George Mountford and divers other persons to the jurors unknown, well knowing the premises, and unlawfully devising and intending to defraud, cheat and prejudice the said Joseph Edge, at the said election of members of the said Burslem Local Board of Health, for the said hamlet of Sneyd aforesaid, on &c., did amongst themselves conspire, &c. together, knowingly, falsely and fraudulently to counterfeit and affix the name, signature and initials of the said George Garner to the said voting paper so delivered to the said George Garner, as in this count mentioned, and to represent to one John Pidduck, then being the chairman of the said Burslem Local Board of Health, the said voting paper, together with the said name, signature and initials of the said George Garner so counterfeited and affixed as last aforesaid (and which said voting paper was then set out in this count), as the true and genuine vote of the said George Garner, for the said Thomas Massey to be a member of the said Burslem Local Board of Health, for the said hamlet of Sneyd, and to procure the same to be received by the said chairman of the said Burslem Local Board of Health as the true and genuine vote of the said George Garner for the said Thomas Massey to be such member as last aforesaid.

The fifth count charged the conspiracy to be to counterfeit and affix the name, signature and initials of the said George Garner, and also the names, signatures, and initials of divers other persons entitled to vote at the said election of members of the said Burslem Local Board of Health, for the said hamlet of Sneyd as aforesaid, and whose names were to the jurors unknown, to the voting papers, and to represent them as their true and genuine votes, &c.

Similar indictments having been found against Charles Cowdock, John Billington, William Ely, and George Mountford,

Rupert Kettle (for the defendants), applied to have all the indictments tried together. Being a misdemeanor at common law, he apprehended it might be done.

Huddleston (for the prosecution), would not oppose the application if it could be legally done.

CROMPTON, J., after conferring with Mr. Hemp, the deputy clerk of assize, said that he had never known such a course adopted, but that on the application of the counsel for the defendant, and with the consent of the counsel for the prosecution, he would take all the cases together.

Huddleston stated the case to the jury.—By the Public Health Act (11 & 12 Vict. c. 63), power was given to establish local boards for districts, the number and qualification of the members of those boards, as well as the boundaries of the district being defined by an Order in Council. The members of the board were elected by the rate payers, and one third of the number went out annually. The mayor or returning officer in boroughs made out the list of voters and list of candidates, and caused voting papers to be left at the houses of electors. It was singular that the statute did not provide any punishment for persons guilty of tam-

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pering with voting papers, although it provided for false answers and other offences. He apprehended, however, that it is perfectly clear that to make a false written statement to the injury or prejudice of others, constitutes the crime of forgery at common law, and if two or more combine with that object they may be indicted for conspiracy. This was the offence now charged against the defendants under the following circumstances:—A local board of health was established in the town of Burslem in 1850. The board consisted of fifteen members, viz., nine for the township of Burslem, three for the hamlet of Sneyd, and three for the hamlet of Rushton Grange. In September, 1852, the annual election of three persons for Burslem, and one for Sneyd and Rushton Grange respectively, to fill up the number resigning, took place, and local politics ran high. There were eight candidates for Burslem, but it was only necessary to mention the names of six; Messrs. Maddock, Dickson and Vernon on one side, and Messrs. Twigg, Pindar and Baker on the other. There were two candidates for Sneyd, Mr. Massey and Mr. Edge. Voting papers were duly issued on the 22nd of September, and collected on the 25th. The majority of votes were found to be in favour of Messrs. Maddock, Dickson and Vernon for Burslem, while for Sneyd the votes were exactly balanced. Upon inquiry it appeared that a great number of voting papers had been filled up for marksmen, and many of them attested by the defendants, who were active partisans, and had attended a meeting at which it was agreed they should go round to the different houses as soon as the voting papers were left, obtain them, fill them up with the names of their candidates, and replace them in the house, to be ready when called for. The 25th section of the Public Health Act provides that if any voter cannot write, he shall affix his mark at the foot of the voting paper in the presence of a witness, who shall attest and write the name of the voter against the same, as well as the initials of such voter, against the name of every candidate for whom the voter intends to vote. The charge against the defendants was, that they had, in pursuance of a general design, signed their names as attesting the marks of the voters, whereas, in fact, the voters had not signed, or authorized the affixing of their names to the voting papers. The object was to create a majority for certain of the candidates, and to prevent the success of the others; thus, on the one hand defrauding those candidates, and on the other, injuring the voter by depriving him of the exercise of his vote.

The formal proofs were then adduced of the establishment and constitution of the local board, and the proceedings at the election in question, including the distribution and collection of the voting papers; the voting papers bearing the attestation of the defendant Hartshorn to the mark of George Garner, were put in and admitted, as were also similar attestations by the other defendants severally, to the marks of voters of the respective names of John Walton, Ann Badderley, William Sillitoe, and John Howell.

John Walton stated that he was not aware that a voting paper

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had been left for him at his house, and had not signed or put his mark to any in the presence of the defendant Cowdack, but the witness admitted that he believed his wife had directed the voting paper to be filled up.

Ann Badderley also said she had not put her mark to the voting paper. She was busy washing when the voting paper was called for, and wished not to interfere in the matter. Her son, who was in the house, told her a few hours afterwards, that the paper was signed.

William Sillito negatived the fact of his filling up or putting his mark to the paper, but said he gave it to his neighbour, Samuel Ogden, to have it signed in the same way as he had done his; the witness knowing how Ogden was going to vote.

CROMPTON, J., then stopped the case, and said: This does not amount to forgery, although it is, undoubtedly, an irregular proceeding. It appears that the voting papers had been filled up by the defendants, either with the express or implied consent of the voters, or with the consent of some person whom the defendants might reasonably believe to have authority. The voters were all called upon. It is possible that the irregularity committed may be indictable, as it is clear the statute intended that the voter should affix his mark *propria manu*, but the attestation in the mode adopted in this case is not forgery. There is no false statement implied, and the essence of the crime of forgery is making a false entry or signature, knowing it to be without authority and with intent to defraud. As I have already stated, I am not at all sure that some proceeding might not have been framed to meet this case, but it is certainly not forgery.

The learned judge then directed the jury to acquit the defendants.

Verdict—Not guilty.

Huddleston, for the prosecution.

Rupert Kettle, for the defendants.

OXFORD CIRCUIT.

STAFFORDSHIRE SUMMER ASSIZES, 1853.

Stafford, July 23.

(Before Mr. JUSTICE CROMPTON.)

REG. v. THOMAS. (a)

Embezzlement—Master and servant.

A "butty collier," who received a certain sum for every ton of coal he raised, was also allowed to sell coal for his employer, the owner of the colliery. It was the prisoner's duty to pay over the gross money received on such sales, and he was subsequently allowed a poundage thereon. The prisoner having converted money received for coal to his own use, and neglected to account for it:

Held, that although the sale of the coal was not compulsory, he was servant to the owner of the colliery, so as to support an indictment for embezzlement.

WILLIAM THOMAS was indicted for feloniously embezzling, on the 30th of January, 1853, the sum of 1*l.* 17*s.* 11*d.*, the moneys of William Fleming Fryer, his master. In two other counts the prisoner was charged with embezzling two other sums of 5*l.* 7*s.* 11*d.* and 2*l.* 18*s.* respectively.

It appeared that the prosecutor was a coal and iron-master, and the prisoner had been for several years a "butty collier," or "charter master" (the two terms being synonymous), at Dean's Colliery, the property of the prosecutor. He was engaged by the prosecutor's agent, but not under any written agreement, to raise coal and load it on the carriages of customers. It was the prisoner's duty to find and pay for labour, horses and tools for that purpose, but he had nothing to do with delivering the coal or finding carriages. He was paid 2*s.* 9*d.* for every ton raised by him, whether for the iron-works or for sale. Several of these "butty colliers" were employed at the same colliery in the same way. The prisoner had succeeded a man named Cox, who sold coal to private customers, and was allowed 8*s.* 6*d.* for every 20*s.* worth so sold; and although nothing was said to the prisoner on that subject, he continued the practice. These were termed "land sales;" and his authority to sell and receive the money on such

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

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sales was recognised by the prosecutor's agent. It was the prisoner's duty to pay over the gross proceeds of any coal sold by him to Henry Ladbury, the machine clerk, as he received it. If he could not do so the same evening it was his duty to do so the next morning. When paid, the clerk entered the sum in a book. The prisoner had no authority to deduct out of any money so received by him, either the 8s. or the 2s. 9d., but to pay it over at once in gross; but he was allowed to draw money from time to time on account of the coal raised to the surface, and the money so received on account was deducted at the monthly settlement, when the balance (for tonnage and commission, if any), was handed to him. He was also paid for "dead work"), i. e., repairs, "heading," "rolling," &c. done in the pit.

It appeared on cross-examination of the prosecutor's witnesses that the prisoner might, if he liked, have taken pits from other coal masters and worked them in the same manner and at the same time with the prosecutor's. When one "butty collier" succeeded another, it was customary to have a valuation of certain materials in use in the pits, and the incoming "butty collier" to pay his predecessor for them, and this course was adopted in this instance. The accumulation of coal at the pit's mouth was injurious to the prisoner's work, and therefore the removal of it by "land sales" when the consumption at the iron works was not sufficient, was beneficial to the prisoner.

It was proved that the prisoner had sold coal to three different persons, and received the amounts charged in the indictment. He had given receipts for three sums, using for that purpose the usual printed forms of the prosecutor's office. The prisoner had not accounted for these sums. He subsequently left the prosecutor's employment without notice.

At the close of the case for the prosecution,

Rupert Kettle objected that the offence of embezzlement had not been substantiated. The relation of master and servant did not exist between Mr. Fryer and the prisoner. There was nothing but an ordinary contract for the execution of certain works. In every instance where the legal relationship of master and servant exists, there must be some personal service to be performed by the latter. The facts here did not show that there was any such duty cast upon the prisoner. He did not engage to raise the coal by his individual hands, for it appeared that he might have had several contracts of this kind, and performed them all by his servants. [CROMPTON, J.—Your argument applies to the raising of the coal. The question is, whether the receipt of the money on the sale of coal in the manner proved, was a receipt of money as a servant. The questions appear to me to be distinct.] If not a servant in the first instance, can it be said that he took upon himself that character by the sale of the coal to customers of his own selection, that sale being optional, for he was not at any time bound to sell? He is a mere volunteer, his dealings being subsequently recognised. Suppose the case of a contractor making

a railway, and part of the land being covered with timber, the operations of the contractor are impeded, and he offers to sell the timber, and the owner having assented, customers are obtained. Could it be said that the contractor was the servant of the owner? [CROMPTON, J.—The service there would be only occasional, and as an agent. I do not know that the duty not being compulsory alters the case. No doubt this is a very nice distinction between servant and agent.] The prosecution will rely on *Barker's case* (1 D. & R. 19, N. P.), where it was held, that a person employed as a journeyman in the trade of a miller, and not to collect moneys, but was in the habit of receiving money on his master's account, might be guilty of embezzlement; but there the prisoner was a hired servant. [CROMPTON, J.—That case is very like the present. But without it, I do not, on consideration, feel much difficulty. This is like *Spencer's case* (R. & R. 299), where the prisoner was employed to go errands when he liked, and it was held, that he might be a servant for the time.] But he was ordered to go on each particular errand. My argument is that, in this case there was no authority to compel, or any obligation to perform in any instance.

CROMPTON, J.—The point has been argued very ingeniously, but I cannot say that at present I entertain any doubt. I will consult my brother Coleridge, and if he has any doubt I will let you know; at present I am of opinion that the prisoner received the money as servant to the prosecutor, and that it was his duty to pay it over immediately as he received it.

Verdict—Guilty.

Corbett, for the prosecution.

Rupert Kettle, for the prisoner.

[No intimation was given that Mr. Justice Coleridge dissented from the opinion of Mr. Justice Crompton.—J. E. D.]

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OXFORD CIRCUIT.

STAFFORDSHIRE SUMMER ASSIZES, 1853.

Stafford, July 23.

(Before Mr. JUSTICE CROMPTON.)

REG. v. MYOTT. (a)

*Felony—Acting under false pretence of the process of the County Court
stat. 9 & 10 Vict. c. 95, s. 57.*

The stat. 9 & 10 Vict. c. 95, s. 57, which enacts that every person who shall act or profess to act under any false colour or pretence of the process of the County Court, shall be guilty of felony, is confined to the use of false instruments, and does not apply to a mere verbal assertion of authority.

Therefore, where the prisoner had obtained payment of a sum in discharge of a debt and costs from a defendant (who had been previously duly served with a summons in the County Court), by pretending that he was an officer of, and authorized by the court to receive it, it was held, that the offence was not made out.

THE indictment alleged that the prisoner, John Myott, on the 30th day of June, A. D. 1853, feloniously and unlawfully did act under a certain false colour and pretence of the process of the County Court of Warwickshire, holden at Birmingham, against the form of the statute, &c.

In the second count, the charge was that the prisoner *professed* to act.

The third count alleged that the prisoner feloniously and unlawfully did act under a certain false colour and pretence of the process of the County Court of Warwickshire, holden at Birmingham, to wit, under the false colour and pretence of being authorized and empowered to issue process (to wit) an execution in the said County Court, against one John Wainwright, at the suit of one John Kingstone, for the recovery of the sum of 1*l.* 7*s.* and costs, against the form of the statute, &c.

The fourth count was for *professing* to act, as alleged in the third count.

The indictment was framed under the latter part of the 57th section of the 9 & 10 Vict. c. 95, which enacts that "every person

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

who shall forge the seal or any process of the court, or who shall serve or enforce any such forged process, knowing the same to be forged, or deliver or cause to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of the said court, knowing the same to be false, *or who shall act or profess to act under any false colour or pretence of the process of the said court, shall be guilty of felony.*"

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It appeared in evidence that John Kingstone had brought an action in the County Court of Warwickshire, against Joseph Wainwright, to recover 1*l.* 7*s.* for goods sold and delivered. The summons bore date the 7th of May, 1853, and called on the defendant to appear on the 7th of June. He did not do so; and on the 30th of June the prisoner called at Wainwright's house, and said he was authorized by the court to receive the debt and costs, and if the amount was not paid on that day, or before ten o'clock the following morning, he should bring an execution and take the goods. The sum asked for by the prisoner was 1*l.* 6*s.* 9*d.* for the debt. Wainwright showed him the summons claimed 1*l.* 7*s.* The prisoner said there was a mistake, and if he, Wainwright, paid him 1*l.* 8*s.* 9*d.* it would cover all expenses. The defendant went with the prisoner to a public house, and there paid the money.

CROMPTON, J., stopped the case for the prosecution, saying that, in his opinion, the charge was not made out, as he thought the act of Parliament applied to false instruments, and not to mere false representations as to the authority or employment of the prisoner. There was no acting or professing to act under the *process* of the County Court.

The prisoner was accordingly acquitted.

There was another indictment against him for a misdemeanor, in obtaining the money by falsely pretending that he was an officer of the County Court, and a person authorized by the court to apply to Wainwright for payment of the debt, and to settle the action. It appeared, however, doubtful whether the prisoner had not been authorized by Kingstone's son, to obtain the money, and the sum having been in fact paid on the faith that the prisoner was authorized by the plaintiff in the action, rather than by reason of any supposed authority from the County Court, the case broke down, and the prisoner was discharged.

Rupert Kettle for the prosecution.

The prisoner was not defended by counsel.

COURT OF CRIMINAL APPEAL.

November 11, 1854.

(Before JERVIS, C.J., ALDERSON, B., COLERIDGE, J., MARTIN, B.
and CROWDER, J.)

REG. v. MORGAN AND ANOTHER. (a)

Larceny—Fraud—False sale.

A. and B. by false representations induced C. to become the purchaser of a dress for 25s. They then took one guinea out of her hand, she being taken by surprise, and neither consenting or resisting, and left with her a dress of considerably inferior value, but refused to give her one which they had promised to give if she would buy that. Upon a case reserved the question put was, whether the facts warranted a verdict of guilty?

Held, that they did, the court being bound to assume that it was part of the fraud to obtain the property by a false sale.

AT the last Quarter Sessions for the parts of Kesteven in the county of Lincoln, Hugh Morgan and John Mackeowan were indicted, for that they on the 29th Sept. 1854, feloniously did steal certain money of Jane Jones, of the moneys, goods, and chattels of the said Jane Jones.

Upon the trial it was proved that Jane Jones, the prosecutrix, lived at Stoke Hall, in these parts and county, as laundry maid; and it was also proved by her and Emily Smith, her fellow servant, that on the 29th Sept. last the two prisoners came to Stoke Hall, that Morgan, who was dressed as a sailor, represented himself to be a Frenchman, and unable to speak English, and that Mackeowan was his interpreter, and would explain. Mackeowan explained that Morgan was a sea captain, and must sell off his goods that night to get to his ship the next morning. Morgan produced and offered the prosecutrix a dress for sale, and signified, through his interpreter, that the price was 25s.: and if she would give 25s. for it he would give her another dress worth 12s., which he also produced. The prosecutrix agreed, and having one sovereign and one shilling in her pocket she took it out, and whilst holding it in her hand Morgan opened her hand and took the guinea out of it. He

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

did not take it forcibly, nor would prosecutrix say that it was against her will; nor was it by her consent. He took her by surprise. Prosecutrix then borrowed 4*s.* of a fellow-servant, but Morgan refused to take it, "for she had borrowed it;" and, addressing the prosecutrix in English, he said she was a bad woman, and had told a lie, and he should not produce the other dress; he then laid down the dress first offered, and packed up the other. Seeing the prisoners about to go away, the prosecutrix told the prisoner Morgan she should send some one after him if he did not produce her dress; he replied she might send for the devil, and both prisoners went away. The prosecutrix sent to the constable, and had both prisoners apprehended in a neighbouring village the same evening. Prosecutrix believed the dress left by the prisoners to be of the value of 14*s.* Emily Smith valued it at 9*s.*

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Upon these facts the jury found both prisoners guilty, and they were sentenced to three calendar months' imprisonment in the House of Correction, and bail to appear and receive judgment not having been offered, they are now in prison upon such sentence. On the part of the prisoners it was contended that no felony was committed by them; that it was a mere breach of contract; that no felonious intent existed in their minds, and that the jury were not warranted on the foregoing facts in finding them guilty; and a case was urgently requested.

The question I now most respectfully submit to the court of Her Majesty's justices of either bench and the barons of the Exchequer, is whether the above facts warrant in point of law the finding of the jury in this case?

No counsel appeared.

JERVIS, C.J. (after stating the facts as above.)—We are of opinion that the facts warrant the finding. We are bound to assume that the jury were properly directed by the chairman, and that they found that it was part of the scheme that the property was to be obtained by a false sale. If so, there was no contract, but a fraud whereby the felony was committed.

Conviction affirmed. (b)

(b) There are many cases in which prisoners have been convicted of larceny—where possession of the property has been fraudulently obtained by means of a pretended sale: (*R. v. Campbell, Ry. & Moo. C. C. 179*; *R. v. Sharpless, 1 Leach, 92.*)

COURT OF CRIMINAL APPEAL.

November 11, 1854.

(Before JERVIS, C. J., ALDERSON, B., COLERIDGE, J., MARTIN, B.,
and CROWDER, J.)

REG. v. HOBSON. (a)

Felonious receiving—Evidence for the jury.

Upon an indictment for feloniously receiving a hat and a watch, it was proved that in consequence of information received from L. (the thief), a constable went to a room in a lodging-house where the prisoner slept, and, in a box in that room, found the stolen hat. The prisoner produced it at once, and admitted that L. had brought it there; but denied any knowledge of the watch. On the following day he was taken into custody, and, after he had left the house, he told the constable that he knew where the watch was, but did not like to say anything about it before the people in the house. The watch was not found at the first place to which he took the constable, but he afterwards sent a boy for it; and the boy having brought it to him, he gave it to the constable: Held, there was sufficient evidence to go to the jury of a feloniously receiving.

THE prisoner, George Hobson, was tried at the West Riding Sessions, held at Rotherham on the 20th June last, upon a charge of feloniously receiving from William Levick one watch, one hat, and 1s., the property of James Birkenshaw, and was found guilty and sentenced to be imprisoned and kept to hard labour in the house of correction at Wakefield for twelve calendar months. William Levick had previously at the same sessions pleaded guilty to the theft. Upon the trial, William Laughton, a policeman, proved that on the 8th of June last he went to prisoner's house in consequence of something he had heard from William Levick, the party charged in the indictment as the thief; that Levick took witness there; that witness asked the prisoner, who was in bed, if Levick had brought a hat there; that the prisoner said "Yes;" that the prisoner then got out of bed and took the hat out of a box in the corner of a room, and gave the hat to witness; that witness asked the prisoner if he knew anything about the watch, that the prisoner said he did not; that witness went the next day to the prisoner's house and took him into custody; that witness told the

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

prisoner that he (witness) would most likely trace the watch and who had it; that when witness and the prisoner got outside the house, the prisoner said he did not like to say anything about the watch before the folks in the house, but he knew where it was—that it was planted—that it was at Mr. Wostenholme's; that witness and the prisoner went to Mr. Wostenholme's, but could not find a watch there; that prisoner then called to a boy and asked him to get the watch; that the watch was afterwards brought by the boy to the prisoner, who gave it to witness.

On cross-examination, the witness said that the house where the prisoner lived was a lodging-house; that witness did not know whether the thief Levick lived there or not, or whether or not the prisoner had exclusive possession of the room where the hat was found, that witness did not notice how many beds were in the room where the hat was found; that when the prisoner said he knew nothing about the watch, there were several people in the house standing round him. It was objected by the prisoner's counsel, that there was no evidence to go to the jury. First, as to the hat; because there was not sufficient evidence of the prisoner's possession of it, the house where the hat was found being a lodging-house, and the prisoner having had no exclusive possession of the room. Secondly, as to the watch; because the prisoner was not shown to have possession of it. All the evidence was, that the prisoner knew where the watch was. The court overruled the objection, being of opinion that there was sufficient evidence to go to the jury; but granted a case for the opinion of the judges.

No counsel was instructed in this case.

JERVIS, C. J.—We are all clearly of opinion that there was evidence to go to the jury.

Conviction affirmed.

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COURT OF CRIMINAL APPEAL. ✓

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(Before JERVIS, C.J., ALDERSON, B., COLERIDGE, J., MARTIN, B.,
and CROWDER, J.)

REG. v. RICHARD CLARKE, (a)

*Rape—Consent—Carnal connexion under circumstances which induce
the woman to believe that the man is her husband.**If a married woman assents to carnal connection with a man under the
belief that he is her husband, the man cannot be convicted of rape.***T**HE following case was stated for the opinion of this court by
Crowder, J. :—

Richard Clarke was tried before me at the last York Assizes, on the 16th July, 1854, on an indictment charging him in the usual form with committing a rape on the person of Jane Murgatroyd, the wife of John Murgatroyd. It appeared in evidence that Jane Murgatroyd went to bed at half-past nine o'clock in the evening, leaving the outer door of her house unfastened, in the expectation of her husband's return home. Having fallen asleep, she was awakened at about half-past two o'clock by a man whom she believed to be her husband passing over her and getting into bed on the opposite side from that on which she was lying. She then fell asleep again; and in about ten minutes was awakened by the man in bed with her drawing her towards him and having connexion with her. She assented to the connexion in the belief that the man was her husband. She afterwards fell asleep again and awoke in about twenty minutes, and then first discovered that the man in bed with her was the prisoner at the bar, who, as soon as he found himself detected, jumped out of the bed and went away. The jury found the prisoner guilty; but they found also that when he entered the bed of Jane Murgatroyd, he intended to have connexion with her fraudulently, but not by force, and, if detected, to desist; whereupon I respited the sentence, reserving for the opinion of the Court of Criminal Appeal the question whether, upon the above state of facts and finding of the jury, the prisoner is entitled to an acquittal.

R. B. CROWDER.

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

No counsel was instructed on behalf of the prisoner.

R. Hall appeared for the crown.

JERVIS, C.J.—How can you get rid of the authority of *R. v. Jackson* (Russ. & Ry. 487.)

Hall.—The question is, whether that can be supported?

CROWDER, J.—I reserved this case, because it is stated in the report of *R. v. Jackson*, that several of the judges, who held that the offence was not rape, intimated that if the case should occur again, they would advise the jury to find a special verdict.

Hall.—The opinion of the judges in that case was not unanimous. Four thought the prisoner guilty of rape; though eight judges held the contrary. The facts are not distinguishable; because there the jury found that the prisoner intended to have connexion with the woman if he could pass as her husband, but not to force her if she discovered the fraud, and being indicted for burglary with intent to commit a rape, he was held entitled to an acquittal. That decision has been followed in subsequent cases; and the only question is, whether the matter is still open for argument; if it is, the point would be that no man is allowed by law to take advantage of his own fraud; and that the cases with regard to burglary, in which it has been held that admission obtained by fraud amounts to a breaking by construction of law, are in point. (1 Russ. on Crimes, 793.)

JERVIS, C.J.—We cannot permit this matter to be opened now. We have spoken to several of the other judges upon the subject, and they all think that the decision in *R. v. Jackson*, is conclusive.

ALDERSON, B.—Most of us think it right.

COLERIDGE, B., MARTIN, B., and CROWDER, J., concurred.

Conviction quashed. (b)

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(b) It may be convenient to notice the cases, in which this question has been considered since the case of *R. v. Jackson*. In *R. v. Saunders* (8 Car. & P. 265), Gurney, B., in summing up, said: "I am bound to tell you that the evidence in this case does not establish the charge contained in this indictment, as the crime was not committed against the will of the prosecutrix, as she consented, believing it to be her husband." In *R. v. Williams* (8 Car. & P. 286), the case was opened on the part of the prosecution as distinguishable from *R. v. Jackson*, because the prosecutrix having discovered the fraud before the prisoner had completed his purpose, resisted, and notwithstanding that resistance the prisoner went on to complete his purpose; but when the prosecutrix gave her evidence it appeared that she assented to the connexion under the belief that the prisoner was her husband, and that she did not discover who it was until the connexion was over. Whereupon Alderson, B. observed: "That puts an end to the capital part of the charge. *R. v. Jackson* is in point;" but Mr. Greaves says, in a note to his edit. of Russ. on Crimes (vol. 1, p. 678), that if the facts had appeared in evidence as they were opened, the question would have been reserved for the opinion of the judges. In both these cases the prisoners were, however, convicted of an assault under 1 Vict. c. 85, s. 11; and in *R. v. Case* (4 Cox C. C. 220), those decisions were quoted and not disapproved of in that respect. In that case the prosecutrix made no resistance, being ignorant of the nature of the act, and believing that the prisoner, a surgeon, was treating her medically with a view to her cure; and it was held, that the prisoner's conduct amounted in law to an assault. That case, however, is distinguishable from the two cases above mentioned; for, as was observed by

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fraud.

one of the judges, the prosecutrix there did not assent to what the prisoner really did ; and there certainly seems great difficulty in the proposition, that a man who is entitled to be acquitted upon a charge of rape on account of the woman's consent (though obtained fraudulently), may, upon the very same transaction, be convicted of an assault. See *R. v. Read* (1 Den. C. C. 377 ; 3 Cox C. C. 266), where the prisoners having been convicted of a common assault on a girl of nine years of age, she having been an assenting party to the connection which took place, though from her tender years she did not know what she was about, the conviction was held wrong, upon the authority of *R. v. Martin* (2 Moo. C. C. 123.) See the grounds of that case explained by Patteson, J. (9 Car. & P. 215.) If it is proved that she did not consent, a conviction for an assault might be justified, though by reason of the tender age of the prosecutrix, her consent or resistance might not be material to the principal offence: (*R. v. Ashbold*, 2 Cox C. C. 115.)

In *R. v. Camplin* (1 Cox C. C. 220 ; 1 Den. 89), the prosecutrix was made insensible by liquor administered to her by the prisoner for the purpose of exciting desire ; and whilst she was in that condition he had connection with her. A majority of the judges held, that he was guilty of rape ; and in the Addenda to 1 Den., there is the following note of the reasons for that decision, supplied by Parke, B. :—"Of the judges who are in favour of the conviction, several thought that the crime of rape is committed by violating a woman when she is in a state of insensibility and has no power over her will, whether such state is caused by the man or not, the accused knowing at that time that she is in that state ; and Tindal, C. J., and Parke, B. remarked, that in the stat. (Westm. 2, c. 34), the offence of rape is described to be ravishing a woman where she did not consent, and not ravishing *against her will*. But all the ten judges agreed that in this case, where the prosecutrix was made insensible by the act of the prisoner, and that an unlawful act, and when also the prisoner must have known that the act was against her consent at the last moment that she was capable of exercising her will, because he had attempted to procure her consent and failed, the offence of rape was committed." The three dissenting judges appear to have thought that this could not be considered sufficiently proved. In *R. v. Ryan* (2 Cox C. C. 115), which was the case of an idiot, the same doctrine was applied ; and the prisoner convicted: (See also *R. v. Page*, *ib.* 133.)

COURT OF CRIMINAL APPEAL

November 11, 1854.

(Before JERVIS, C.J., ALDERSON, B., COLERIDGE, J., MARTIN, B.,
and CROWDER, J.)

REG. v. CATHERINE WEST.(a)

*Larceny—Property lost or mislaid—Finding under circumstances which do not warrant the finder in treating it as lost.**In order to prevent the taking of goods by a finder from being larceny, it is necessary that they should be found in such a place and under such circumstances as would warrant the taker in presuming that the owner did not know where to find them.**A customer left his purse upon the prisoner's stall in a market, and it being pointed out to her by a stranger, she took possession of it, but denied all knowledge of it when the customer returned to claim it. The jury found that, when the prisoner took it, she intended to appropriate it to her own use, but that at that time she did not know the owner.**Held, that this was not a finding of property under circumstances which justified the prisoner in treating the property as lost, and that she was therefore properly convicted of larceny.**If the case had been one of finding lost goods, it would have been necessary to ask the jury, whether the prisoner, when she took the purse, reasonably believed that the owner could not be found.***T**HIS was a case stated by the Recorder of Leicester.

Catherine West, the prisoner in this case, was tried before me, the Recorder of the borough of Leicester, at the last Midsummer Quarter Sessions of the Peace for the said borough, upon an indictment for simple larceny, in having feloniously stolen on the 27th of May last, at the parish of St. Martin, in the said borough, one purse, five sovereigns, ten half-sovereigns, eight half-crowns, twenty shillings, and forty sixpences, the goods, chattels, and monies of William Evatt.

The prosecutor, in making a purchase, left his purse on the prisoner's stall in Leicester market, unperceived by either of them.

A stranger pointed it out to the prisoner (and supposing it to be her own) reproved her carelessness. She put the purse into her pocket and replied, "Yes, it is a wonder it was not gone before this." She took an early opportunity to conceal the purse, and on the prosecutor's returning to search for it, denied all knowledge of it.

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

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v.
WEST.
—
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—
Larceny—
Property lost or
mislaid.

The counsel for the prisoner relied upon *Reg. v. Preston* (21 L. J. 41, M. C.) and *Reg. v. Thurborn* (1 Den. C. Cas. 387; S. C. nom. *R. v. Wood*, 3 Cox C. C. 453.)

I put two questions to the jury. 1st. Did the prisoner take up the purse, knowing that it was not her own, and intend at that time to appropriate it to her own use? 2ndly. Did the prisoner know who was the owner of the purse at the time she took it?

The jury answered the former question in the affirmative, and the latter in the negative, and I, therefore, directed a verdict of guilty against the prisoner to be recorded.

I reserved a case for the opinion of the Court of Criminal Appeal, whether, under the circumstances above stated, the prisoner was properly convicted?

The judgment upon the conviction was postponed, and the prisoner was discharged on recognizance of bail to appear and receive judgment at the sessions next after this case should be heard and decided.

No counsel were instructed in the case.

[The following passages from the judgment in *R. v. Thurborn*, 1 Den. C. C. 388, are important with reference to the ground upon which this case is decided. "It cannot, indeed, be doubted that if at this day the punishment of death was assigned to larceny, and usually carried into effect, the appropriation of lost goods would never have been held to constitute that offence, and it is certain that the alteration of punishment cannot alter the definition of the offence. To prevent, however, the taking of goods from being larceny, it is essential that they should be presumably lost, that is, that they should be taken in such a place and under such circumstances as that the owner would be reasonably presumed to have abandoned them, or at least not to know where to find them.

Therefore, if a horse is found feeding on an open common, or on the side of a public road, or a watch found apparently hidden in a hay stack, the taking of these would be larceny, because the taker had no right to presume that the owner did not know where to find them; and, consequently, had no right to treat them as lost goods. * * * It appears, however, that goods which do fall within the category of lost goods, and which the taker justly believes to have been lost, may be taken and converted so as to constitute the crime of larceny, when the party finding may be presumed to know the owner of them, or there is any mark upon them, presumably known by him, by which the owner can be ascertained.

Whether this is a qualification introduced in modern times, or which always existed, we need not determine. It may have proceeded on the construction of the reason of the old rule, *Quia dominus rerum non apparet, ideo cujus sunt incertum est*, and the rule is held not to apply when it is certain who is the owner; but the authorities are many, and we believe this qualification has been generally adopted in practice, and we must, therefore, consider it to

be the established law. There are many reported cases on this subject. Some where the owner of the goods may be presumed to be known from the circumstances under which they are found; amongst these are mentioned the cases of articles left in hackney coaches by passengers, which the coachman appropriates to his own use, or a pocket-book found in a coat, sent to a tailor to be repaired, and abstracted and opened by him. In these cases the appropriation has been held to be larceny. Perhaps these cases might be classed amongst those in which the taker is not justified in concluding that the goods were lost, because there is little doubt he must have believed that the owner would know where to find them again, and he had no pretence to consider them abandoned or derelict. (a) * * * The result of these authorities is, that the rule of law on this subject seems to be that if a man find goods that have been actually lost, or are reasonably supposed by him to have been lost, and appropriates them with intent to take the entire dominion over them, really believing when he takes them that the owner cannot be found, it is not larceny. But if he takes them with the like intent though lost, or reasonably supposed to be lost, but reasonably believing that the owner can be found, it is larceny.

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v.
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Larceny—
Property lost or
misaid.

In applying this rule, as indeed in the application of all fixed rules, questions of some nicety may arise, but it will generally be ascertained whether the person accused had reasonable belief that the owner could be found by evidence of his previous acquaintance with the ownership of the particular chattel, the place where it is found, or the nature of the marks upon it. In some cases it would be apparent; in others, appear only after examination.]

The judges retired to consider the case; and upon their return, the judgment of the court was pronounced by

JERVIS, C.J.—The question reserved in this case is, whether, Judgment.
under the circumstances stated, the prisoner was properly convicted, and we are all of opinion that she was. The facts proved in evidence were these. (His Lordship then stated the facts as above.) If, therefore, the evidence had shown that this was lost property, the case would have been imperfectly dealt with, because in that case the question ought to have been put to the jury, whether she had reasonable means of finding the owner, or reasonably believed that the owner could not be found. But, in fact, this is not a case of lost property at all; here the prisoner could have no reasonable ground for supposing that it was lost property; and the distinction is quite clear between property mislaid, that is, put down and left in a place to which the owner would be likely to return for it, and property lost. Now in this case, the purse could not be treated as lost; the prisoner must have known that in all probability it would occur to the owner where he had left it, and that he would return for it; and that being so, the question as to possession by finding, which arose in *Thurborn's case*, does not arise here.

Conviction affirmed.

(a) See *R. v. Pierce*, ante, p. 117.

COURT OF CRIMINAL APPEAL.

November 11, 1854.

(Before JERVIS, C.J., ALDERSON, B., COLERIDGE, J., MARTIN, B.
and CROWDER, J.)

REG. v. SHARPE AND ANOTHER.(a)

Larceny—Venue—Carriage passing through different counties.

Stat. 7 Geo. 4, c. 64, s. 13, is not confined to the carriages of common carriers or public conveyances; but, if property is stolen from any carriage employed in any journey, it authorises the trial of the offender in any county through which the carriage has passed.

HENRY SHARPE and George Charles were indicted at the Middlesex October Quarter Session, held at Clerkenwell, for stealing a quantity of oats and beans the property of their employers the Great Northern Railway Company; and Henry Brown was indicted for feloniously receiving the same.

It appeared in evidence that the two prisoners, Sharpe and Charles, were carmen of the company, and that on the morning of the 18th September they left the Great Northern Station, in the county of Middlesex, with a waggon belonging to the company, with directions to proceed with it to Woolwich, in the county of Kent; and that before they started the usual quantity of oats and beans and chaff for provender for the horses was given out to them, and put into the waggon in nosebags. It was then proved that on the arrival of the waggon at the Antigallican public-house in Woolwich, the two prisoners, Sharpe and Charles, took the nosebags from the waggon and delivered them, with their contents, to the prisoner Henry Brown, who was the ostler at the Antigallican, and that he gave them sixpence for the same.

The jury found all the prisoners guilty, and they were sentenced respectively to different terms of imprisonment, and committed to the House of Correction at Coldbath-fields to abide the decision of the Criminal Court of Appeal upon the point reserved for its consideration, that point being whether the case falls within the provisions of the statute 7 Geo. 4, c. 64, s. 13.

Parry for the prisoner.—This case ought to have been tried at Kent, unless the 7 Geo. 4, c. 64, s. 13 applies; and the question is,

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

whether that enactment is not limited to public conveyances and the carriages of common carriers.

That section enacts, "that where any felony or misdemeanor shall be committed on any person, or on or in respect of any property in or upon any coach, waggon, cart, or other carriage whatever employed in any journey, or shall be committed on any person, or on or in respect of any property on board any vessel whatever employed on any voyage or journey upon any navigable river, canal, or inland navigation, such felony or misdemeanor may be dealt with, inquired of, tried, determined and punished in any county, through any part whereof such coach, waggon, cart, carriage, or vessel shall have passed in the course of the journey or voyage during which such felony or misdemeanor shall have been committed in the same manner as if it had been actually committed in such county." [JERVIS, C. J.—Are the nosebags property "in or upon" the carriage? ALDERSON, B.—If one of the horses had been stolen, would that have been within the statute?] The case finds that the nosebags were in the waggon, and taken from the waggon; (b) but it may be doubted whether the statute was not intended to apply to public conveyances only.

JERVIS, C. J.—There can be no doubt about that. The provision is quite general; it applies to "any carriage whatever employed in any journey." The object of the enactment is clear enough. If property is stolen during a journey, it may in many cases be quite impossible for the prosecutor to ascertain at what part of the journey the offence was committed. The statute, to get rid of that difficulty, provides that the offender may be indicted in any of the counties through which the carriage passed in the course of that journey.

The other judges concurring,

Conviction affirmed.

(b) In *Sharpe's case* (2 Lewin, 233), it appeared that the prisoner had acted as guard of a coach from Penrith, in Cumberland, to Kendal, in Westmoreland, and was entrusted with a banker's parcel, containing bank notes and sovereigns; on changing horses at some distance from Penrith, he carried the parcel to a privy, and while there took out of it the sovereigns; and Parke, B. held, that as the act of stealing was not "in or upon the coach," the case was not within the statute, and the felony having been committed in Westmoreland, the indictment ought to be preferred in that county.

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v.
SHARPE AND
ANOTHER.
—
1854.
—
*Larceny during
a journey—
Venue.*

COURT OF CRIMINAL APPEAL.

November 11, 1854.

(Before JERVIS, C.J., ALDERSON, B., COLERIDGE, J., MARTIN, B.
and CROWDER, J.)

REG. v. ROBINS.(a)

Larceny—False pretences—Parting with the property or the possession only.

When one servant obtains from another, by means of a false pretence, the goods of the master, which the latter had no authority to deliver to him, the offence is larceny and not false pretences.

Where, therefore, goods were in the possession of bailees, and one of their servants, having authority to deliver them only on the orders of the bailees or their managing clerk, was induced by a false statement to part with them to another servant of the bailees, who carried them away and appropriated them to his own use :

Held, that he was properly convicted of larceny.

JOHNS ROBINS was tried at the Middlesex Sessions in September, 1854, upon an indictment which charged him with stealing five quarters of wheat, the property of his masters, George Swayne and another.

The wheat in question was not the property of the prosecutors, but part of a large quantity consigned to their care, and deposited at one of their storehouses. This storehouse was in the care of Thomas Eastwick, a servant of the prosecutors, who had authority to deliver the wheat only on the orders of the prosecutors, or of a person named Callow, who was their managing clerk. It was proved that on the 24th June, the prisoner, who was a servant of the prosecutors at another storehouse, came to the storehouse in question, accompanied by a man with a horse and cart, and obtained the key of the storehouse from Eastwick, by representing that he, the prisoner, had been sent by the managing clerk, Callow, for five quarters of wheat, which he was to convey to the Brighton Railway. Eastwick knowing the prisoner, and believing his statement, allowed the wheat to be removed, the prisoner assisting to put it into the cart in which it was conveyed from the prosecutor's premises, the prisoner going with it. It was also proved that Callow had given no such authority, the prisoner's statement being entirely false, and that the wheat was not taken to the Brighton Railway, but disposed of, with the privity of the prisoner,

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

by other parties, who had been associated with him in the commission of the offence.

The counsel for the prisoner contended that the wheat was obtained by false pretences; but the jury were directed, if they believed the facts, that the offence amounted to larceny, and they found the prisoner guilty of that offence. The prisoner was sentenced to twelve months' imprisonment, and is now confined in the House of Correction at Coldbath-fields, in execution of that sentence. The question reserved was whether the verdict was right in point of law.

Metcalf, for the prisoner.—This was a case of false pretences, not larceny, the prosecutor having parted with the property. [ALDERSON, B.—Not to the prisoner, to whom it was only delivered for the special purpose of being taken to the Brighton Railway. JERVIS, C.J.—He obtained the key by false pretences, but he stole the wheat.] Eastwick had the sole charge, and a delivery by him was the same in effect as a delivery by the owner.

ALDERSON, B.—But to bring the case within the class of statutable false pretences, the party who delivers the property must have authority to part with it absolutely, and must mean to part with it to the prisoner. In *R. v. Barnes* (2 Den. C. C. 59; 5 Cox C. C. 112), the prisoner was authorised to purchase and pay for kitchen stuff on behalf of his masters; and by falsely representing to their chief clerk on one occasion, that he had paid a sum of money for kitchen stuff, he obtained that sum from the clerk; but it was held that he was not guilty of larceny, though he might have been indicted for obtaining it by false pretences; and the ground stated was, that “when the clerk delivered the money to the prisoner he delivered it to him with the intention of parting with it altogether.”

JERVIS, C. J.—There the clerk had authority to pay the prisoner what he demanded: he did not in any respect exceed the instructions of his masters; and he clearly parted with the property.

ALDERSON, B.—In this case the property remained Swaine's throughout.

Metcalf.—Swaine was bailee of the consignor; he had only a special property, and that special property he parted with.

MARTIN, B.—Swayne was the owner for the purpose of this indictment.

COLERIDGE, J.—And the prisoner took it as Swaine's servant.

Metcalf.—Of course, if the property is not parted with, the conviction is right.

JERVIS, C. J.—Yes; it is a clear case.

ALDERSON, B.—If the prisoner had told the truth and done what he did, he would have committed larceny; but you say that he did not, because he also made a false pretence.

The other judges concurred.

Conviction affirmed. (b)

(b) *R. v. Longstreet* (By. & M. C. C. 137), is quite in point. In that case the prisoner,

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v.
ROBINS.

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*Larceny or
false pretences.*

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ROBINS.

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*Larceny or
false pretences.*

by falsely representing to the porter of Messrs. T. & Co., who were carriers, that certain chests of tea, which had arrived at their warehouse belonged to him, obtained possession of them from the porter, paying him the carriage and portorage. The jury found the prisoner guilty of larceny, and said they were of opinion that when the prisoner inquired at the waggon office for teas (as he had done several times before the arrival of the chests in question), he intended to obtain property not his own, and when he obtained the goods in question he knew they were not his property, and intended to steal them; and, upon a case reserved, the judges held the conviction right, on the ground that the ownership of the goods was not parted with, the carrier's servant having no authority to part with the ownership to the prisoner, and the taking was therefore larceny.

COURT OF CRIMINAL APPEAL.

November 11, 1854.

(Before JERVIS, C. J., ALDERSON, B., COLERIDGE, J.,
MARTIN, B., and CROWDER, J.)

REG. v. WILLIAM SIMPSON.(a)

Larceny from the person—Momentary severance.

In order to constitute the offence of larceny from the person, any separation of the property from the person, however momentary and minute, is sufficient, although the thief does not succeed in retaining possession of it :

Where, therefore, A. took a watch from B.'s waistcoat-pocket, and forcibly drew the chain and key attached to it from a button-hole, through which they had been passed; but his hand being arrested, the key caught upon another button, and was thereby suspended :

Held, that A. was rightly convicted of stealing from the person.

WILLIAM SIMPSON was tried before Mr. Bodkin, at the sessions of the peace for the county of Middlesex, in July last, upon an indictment which charged him with having stolen from the person of Michael Mapper a gold watch and chain.

The watch was carried by the prosecutor in the pocket of his waistcoat, and the chain, which was at one end attached to the watch, was at the other end passed through the button-hole of his waistcoat, where it was kept by a watch-key turned so as to prevent the chain slipping through.

The prisoner took the watch out of the prosecutor's pocket, and forcibly drew the chain out of the button-hole, but his hand was seized by the prosecutor's wife; and it then appeared that, although the chain and watch-key had been drawn out of the button hole, the front of the key had caught upon another button, and

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

was thereby suspended. It was contended for the prisoner that he was guilty of an attempt only; but Mr. Bodkin thought that, as the chain had been removed from the button-hole, the felony was complete, notwithstanding its subsequent detention by its contact with the other button.

The jury found the prisoner guilty of the felony, and, a former conviction having been proved, he was sentenced to penal servitude for four years.

The execution of the sentence was respited, and the prisoner was committed to the House of Correction, Coldbath-fields, where he now is.

The case prayed the judgment of the court whether the facts above stated justified the conviction in point of law.

Parry, for the prisoner.—A conviction of larceny from the person cannot be sustained under these circumstances; because the property never was separated from the person of the prosecutor. It continued “about the person;” which is the expression used in *R. v. Thompson* (1 Mood. C. C. 78.) In that case it appeared that the prisoner drew a book from the inside pocket of the prosecutor’s coat, about an inch above the top of the pocket, but whilst the book was still “about the person” of the prosecutor, he suddenly put up his hand, upon which the prisoner let the book drop, and it fell into the prosecutor’s pocket. Upon those facts, the majority of the judges held that although there was a sufficient asportation to constitute the offence of simple larceny, there was not a sufficient removal to constitute the offence of larceny from the person, inasmuch as the book from first to last remained “about the person” of the prosecutor. That is a decision strongly in the prisoner’s favour; and it points out the distinction between a removal sufficient to support simple larceny, and that which is necessary to sustain a conviction for larceny from the person. Here the property continued about the waistcoat, and was protected by it from first to last. There is, however, a stronger case in 1 Hale P. C. 508, where it is said, “A. hath his keys tied to the strings of his purse; B., a cut-purse, takes his purse with money in it out of his pocket, but the keys, which were hanged to his purse-strings, hanged in his pocket. A. takes B. with his purse in his hand, but the string hanged to his pocket by the keys. It was ruled this was no felony, for the keys and purse-strings hanged in the pocket of A., whereby A. had still in law the possession of his purse, so that *licet cepit non asportavit*.” (40 Eliz., *Wilkinson’s case*, cited M. 8 Jac. C. B. See *Crompt. Justice*, 35 a.) That case strongly resembles the present, but it is unnecessary to go so far as that case, because it may be conceded here that there was a sufficient asportation for simple larceny.

COLERIDGE, J.—In the case mentioned by Lord Hale there never was any severance for a moment. In this case there must have been a momentary severance; because the case finds that the key was drawn out of one button hole, and was subsequently detained by coming in contact with another button.

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v.
SIMPSON.
—
1854.

*Larceny from
the person—
Severance.*

Argument.

REG.
v.
SIMPSON.
—
1854.

*Larceny from
the person—
Severance.*

ALDERSON, B.—How do you distinguish this from *Lapier's case* (1 Leach, 320)? There the prisoner snatched an ear-ring from a lady's ear, and the ear-ring was afterwards found amongst the curls of her hair; but it was held that he was properly convicted of robbery.

Parry.—There could be no doubt about the complete severance in that case, because the lady's ear was torn through. Some removal from the person must be proved; and in *Farrell's case* (1 Leach, 362 n.), it was held not enough that the prisoner had by threats compelled a man to lay down a bed which he was carrying, he being apprehended before he had time to take it up from the place where it lay.

Payne, contra, was not called upon.

Judgment.

JERVIS, C. J.—We are unanimous in considering this conviction right. The question is, whether the finding of the jury amounts legally to a finding that the property was taken from the person; and we think it does. This is in no respect like the case cited from Lord Hale, where the purse was entangled with the keys which hung to the pocket. In that case there never was at any moment a separation of the property from the person; but the keys and the purse-strings and the purse were all fastened together and continued attached to the pocket of the prosecutor. But this case is precisely similar to *Lapier's case*. There the prisoner violently snatched and tore an ear-ring from a lady's ear; there was, therefore, force sufficient to constitute the offence of robbery; but it was also necessary that there should be a stealing from the person; and it appeared that the ear-ring taken from the ear immediately dropped upon the curls of the hair, and was afterwards found amongst the curls. The property, therefore, was only momentarily in the possession of the prisoner, but it was held to be sufficient if there was a separation of the property from the person of the prosecutor, even though for a moment only. With respect to *Thompson's case*, it is unnecessary to pronounce any opinion. Some confusion appears to me to have been introduced by the use of the expression "about the person," which is not in the statute (7 Will. 4 & 1 Vict. c. 87, s. 5.) The statute speaks of stealing "from the person of another;" and the six judges who held the conviction wrong in *Thompson's case*, may have thought that, as the book was only partially lifted from the pocket and remained under the covering flap of the prosecutor's coat, it still continued under the protection of his person. For my own part, I should be disposed to think that the minority came to the right conclusion in that case; but there is the distinction which I have mentioned. This, therefore, is the same as *Lapier's case*, and it is distinguishable from *Thompson's case*.

ALDERSON, B.—It is true, there must be a removal from the person; but a hair's breadth will do.

COLERIDGE, J., MARTIN, B. and CROWDER, J. concurred.

Conviction confirmed.

COURT OF CRIMINAL APPEAL.

*November 11, 1854.**(Before JERVIS, C. J., ALDERSON, B., COLERIDGE, J., MARTIN, B. and CROWDER, J.)*

REG. v. JAMES BEESTON.(a)

*Evidence—Admissibility of deposition after death of witness—Identity of charge—Opportunity of cross-examination—Stat. 11 & 12 Vict. c. 42, s. 17.)**Under stat. 11 & 12 Vict. c. 42, s. 17, in order to render the deposition of a witness, who is dead or too ill to travel, admissible upon the trial of any person charged with an indictable offence, it is necessary to show that the person indicted was present when the deposition was taken before the magistrate, and had full opportunity of cross-examining the witness; but, it is not necessary that the deposition should have been taken upon a charge of the same identical offence.**The judge at the trial is to decide whether the prisoner had full opportunity of cross-examination when the deposition was taken; but, a mere technical difference in the charge, when the facts and circumstances are the same, is not enough to show that he had not full opportunity of cross-examination.**Where, therefore, upon the trial of an indictment for murder, a deposition made by the deceased before his death, was tendered in evidence, but objected to on the ground that it was taken, not upon a charge of murder, but upon a charge of wounding with intent to do grievous bodily harm:**Held, that the objection could not be sustained, and that the deposition was properly received in evidence.*

CASE.

THE following case was reserved by Crompton, J. :—

James Beeston was tried before me at the last Stafford Assizes, on an indictment for the murder, and on a coroner's inquisition for the manslaughter, of James Arkinstall. The prisoner had caused the death of the deceased by striking him on the head with a hammer; and between the blow and the death the examination and deposition of the deceased had been duly taken before a justice of the peace, in the presence of the prisoner, on the charge mentioned in the heading of the deposition, which was,

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

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v.
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—
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*Evidence of
Admissibility of
deposition.*

for that the said James Beeston did, on, &c. at &c. unlawfully, maliciously, and feloniously, with a certain hammer, wound the said James Arkinstall, with intent then and there to do some grievous bodily harm to the said James Arkinstall, contrary to the form of the statute, &c.

The counsel for the prosecution offered in evidence the deposition so taken. The counsel for the prisoner objected to its being received in evidence, on the ground that the deposition was not taken on the same charge for which the prisoner was on his trial; and that the prosecution in which the trial was taking place was not the same prosecution as that in which the deposition had been taken, within the words of the stat. 11 & 12 Vict. c. 42, s. 17, (b) "in such prosecution," which he contended only allows such a deposition to be read on a trial for the very same offence with which a prisoner is charged when the deposition is taken; and he relied on the case of *R. v. Ledbetter*, 3 Car. & Kir. 108.

I thought it best to take the course adopted in the case of *R. v. Dilmore*, 6 Cox Crim. Cas. 52, and received the deposition in evidence. The prisoner was convicted and sentenced to fifteen years' transportation; and I now state this case for the opinion of the Court of Criminal Appeal—the question being, "whether the deposition taken on the charge of maliciously wounding, with intent, &c. was properly received in evidence?"

C. CROMPTON.

Argument.

Huddleston, for the prisoner.—This deposition would not have been admissible before the statute 11 & 12 Vict. c. 42, and is not rendered admissible by sect. 17 of that act. [JERVIS, C.J.—I thought it was quite clear that it would have been admissible before the statute.] At all events it is not admissible since. The whole question is fully discussed in *R. v. Ledbetter*, 3 Car. & K. 108, in which Mr. Greaves, after consulting Lord Campbell, C.J.

(b) Stat. 11 & 12 Vict. c. 42, s. 17. "That in all cases where any person shall appear or be brought before any justice or justices of the peace charged with any indictable offence, whether committed in England or Wales, or upon the high seas, or on land beyond the sea, or whether such person appear voluntarily upon summons, or have been apprehended with or without warrant, or be in custody for the same or any other offence, such justice or justices, before he or they shall commit such accused person to prison for trial, or before he or they shall admit him to bail, shall, in the presence of such accused person, who shall be at liberty to put questions to any witness produced against him, take the statement (M.) on oath or affirmation of those who shall know the facts and circumstances of the case, and shall put the same into writing, and such depositions shall be read over to and signed respectively by the witnesses who shall have been so examined, and shall be signed also by the justice or justices taking the same; and the justice or justices before whom any such witness shall appear to be examined as aforesaid, shall, before such witness is examined, administer to such witness the usual oath or affirmation which such justice or justices shall have full power and authority to do; and if upon the trial of the person so accused as first aforesaid, it shall be proved by the oath or affirmation of any credible witness that any person whose deposition shall have been taken as aforesaid is dead, or so ill as not to be able to travel, and if also it be proved that such deposition was taken in the presence of the person so accused, and that he or his counsel, or attorney, had a full opportunity of cross-examining the witness, then if such deposition purport to be signed by the justice by or before whom the same purports to have been taken, it shall be lawful to read such deposition as evidence in such prosecution without further proof thereof, unless it shall be proved that such deposition was not in fact signed by the justice purporting to sign the same."

and Williams, J., held a deposition inadmissible upon a trial for wounding with intent, where the charge before the magistrate was of an assault only.

In that case, Mr. Greaves said: "In consequence of the great importance of this question, I have consulted both Lord Campbell and Mr. Justice Williams, and we are all of opinion that the deposition in this case is not admissible in evidence upon this indictment. Where a prisoner is taken before a magistrate upon any charge, his attention is necessarily directed to that particular charge, and his cross-examination of the witnesses will, probably, be directed to meet such charge alone; in addition to which, cases may well be supposed on which the justice might prevent the prisoner from cross-examining as to anything which did not appear to him relevant to the particular charge then pending before him. Upon these grounds, it would be very unreasonable to permit a deposition taken on a charge for one offence to be admitted against a prisoner upon a trial for a different offence. Then, if the words of the section in question be carefully examined, it is plain that they only authorise the giving in evidence of a deposition upon an indictment for the very same offence as was 'charged' before the justice.

"The section commences by directing the manner in which a deposition is to be taken against any person 'charged with any indictable offence,' and afterwards provides that 'if upon the trial of the person so accused' certain proof be given, such deposition may be read as evidence 'in such prosecution.' Now that must mean a prosecution for the very offence charged before the justice. Whether, therefore, we look at the reason of the thing or the words of the section, we are of opinion that a deposition is only admissible where the indictment is for the same identical offence as that 'charged' before the justice, and upon which such deposition was taken, and, consequently, this deposition must be rejected."

Now the whole of that reasoning applies precisely to the present case; and it is sanctioned by the authority of two judges.

ALDERSON, B.—Mr. Greaves, in his judgment, assumes that there might be questions which would be relevant to the one charge, and not to the other; but he does not go on to specify any such questions.

Huddleston.—He only says that the justice by whom the deposition was taken might think some question irrelevant to the charge before him, which could not be considered irrelevant to the charge contained in the indictment.

ALDERSON, B.—There is the difficulty. When the facts are the same, I do not see how the technical difference in the charge can affect the cross-examination.

Huddleston.—Suppose the prisoner had proposed to cross-examine the witness as to some prior internal injury, the magistrate might have stopped him from putting the question as irrelevant; and yet when death ensued, it might become very material. Even upon the words of the statute full opportunity of

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cross-examination is made an essential condition of receiving the deposition, "as evidence in such prosecution."

ALDERSON, B.—It is the same prosecution; the same inquiry. The only difference is, that by the act of God death has ensued. How can it be said that he had not full opportunity of cross-examining?

Huddleston.—Suppose that the immediate cause of death is erysipelas; and the question is, whether that arose from the wound inflicted by the prisoner or from natural causes. In such a case many questions would be material upon the trial for murder or manslaughter, which would be wholly immaterial upon a charge of stabbing or assault.

JERVIS, C. J.—*R. v. Ledbetter* cannot be regarded as a decision of three judges in *banc*.

Huddleston.—No; it is the decision of two judges on circuit.

ALDERSON, B.—Hardly that; it is the opinion of Mr. Greaves, with the concurrence of two judges.

COLERIDGE, J.—In *R. v. Ledbetter* there seems to have been a substantial difference between the two charges; because there the charge before the magistrate was of a common assault only; and the cross-examination upon that charge might very probably be different from what it would be upon the much more serious charge of felonious wounding.

Argument.

JERVIS, C. J.—I thought that the conditions of receiving depositions in evidence under the statute were these; that there should be a charge before a magistrate of an indictable offence; and then, "if upon the trial of the person *so accused*," that fixes the identity of the person, it be proved that any person whose deposition has been taken is dead or unable to travel, the deposition may be read, provided that it be proved that when the deposition was taken the accused person was present, and had full opportunity of cross-examination. The section does not say that the charge must be the same.

Huddleston.—The words "if upon the trial of the person *so accused* as first aforesaid," point not only to the identity of person, but to the identity of charge also.

JERVIS, C. J.—"As aforesaid;" that is, of any indictable offence.

Huddleston.—No; of the indictable offence charged.

ALDERSON, B.—Suppose the facts are precisely the same; but it is discovered that the legal result of those facts is different from what was supposed, and the indictment is framed accordingly, as for false pretences instead of larceny; would that exclude a deposition taken upon the former charge? It would be very inconvenient if it were so.

Huddleston.—Unless it should appear clearly that the difference of charge could not affect the cross-examination of the witness, the deposition would not be admissible.

MARTIN, B.—This point is expressly decided in *R. v. Smith*,

R. & R. C. C. 339. There the deposition was held admissible in a case of murder, although it was taken when the prisoner was brought before two magistrates upon a charge of an assault upon the deceased, and also upon a charge of robbing a manufactory which the deceased had been employed to guard.

Huddleston.—In *R. v. Ledbetter*, that case was mentioned by Mr. Greaves, who doubted whether it would be considered a binding authority since the statute. Besides, the judges were not unanimous in that case.

JERVIS, C. J.—By the report of it in 2 Stark. N. P. C. 208, it is stated that ten out of eleven judges thought it admissible on the authority of *R. v. Radbourne*, 1 Leach, 457. Abbott, J. alone thought it inadmissible.

ALDERSON, B.—I defended the prisoner in *R. v. Smith*, before Richards, C. B., and the objection which I took to the reception of the deposition in that case was, not that the charge was different, but that a great part of it had been taken in the prisoner's absence; and although the witness was afterwards resworn in the prisoner's presence, and the deposition being read over to him, he stated it to be correct, and the rest of the examination was taken in the ordinary way, and at the end the prisoner was asked whether he would put any questions, I contended, upon the authority of a case before Chambre, J. (*R. v. Forbes*, Holt, N. P. C. 599), that there had not been a sufficient opportunity of cross-examination, and that so much of the deposition as had been taken in his absence was inadmissible. I was not called in to argue it, which I thought strange; and though the judges held the deposition admissible, I still think I was right.

Huddleston.—Depositions taken before a coroner are inadmissible, because there is no person under charge and, therefore, no right to cross-examine; and, indeed, the person afterwards charged is often not present: (*R. v. Wall*, 2 Russ. on Cr. (3rd edit.) p. 893, note *e.*) (c)

JERVIS, C. J.—You must rely entirely upon the Act of Parliament.

Huddleston.—No; independently of the statute, upon principle this deposition ought not to be received. The only ground upon which depositions of witnesses can ever be received in evidence against another person is this—that he being present when they were taken, by his silence impliedly assented to the statements made; but in *Melen v. Andrews*, M. & M. 336, Parke, J. disposes of that ground with reference to examinations in the course of a judicial proceeding. He said: "I think it is the safer course to hold that the deposition of a witness taken in a judicial proceeding, is not evidence, on the ground that the party against whom it is sought to be read was present, and had the opportunity of cross-examining.

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(c) The statement in the text is, that the prevailing opinion is in favour of the admissibility of depositions taken before a coroner, even though the prisoner was absent, but, both author and editor concur in thinking that the reasons and authorities for that doctrine are not satisfactory.

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It clearly would not be admissible against a third person, who merely happened to be present, and who, being a stranger to the matter under consideration, had not the right of interfering; and I think the same rule must apply here. It is true that the plaintiff might have cross-examined or commented on the testimony; but still, in an investigation of this nature, there is a regularity of proceeding adopted which prevents the party from interposing, when and how he pleases, as he would in a common conversation. The same inferences, therefore, cannot be drawn from his silence, or his conduct in this case, which generally may in that of a conversation in his presence; and as it is only for the sake of these inferences that the conversation can be admitted, I think it better to refuse the evidence now offered." *Finden v. Westlake* (M. & M. 462, per Tindal, C. J.) is to the same effect, and if that reasoning applies where the deposition is taken in a case of summary conviction like those cited, it certainly applies with much greater force where the person is under charge of an indictable offence, and is generally embarrassed to an extent which prevents him from putting any questions.

Judgment.

Scotland, for the prosecution, was not called upon.

JERVIS, C. J.—We are unanimously of opinion that the deposition under the circumstances was admissible. Without depreciating the authority of *R. v. Ledbetter*, it is clear that before the recent statute it would have been admissible. The cases are all one way. *R. v. Radbourne*, in which the information taken before was received after the death of the informant, was acted upon in *R. v. Smith*; and in the latter the doubt supposed to have been entertained by Abbot, J. may have been upon the question whether there had been a sufficient opportunity of cross-examination in that case. The judges, however, felt bound by the previous decision; and there is no reason why we, fortified by a second decision, should, in this instance, depart from the convenient rule of abiding by decided cases. Upon the words of the act also, we are all clearly of opinion that the deposition was admissible. It adds a rule which the judges had previously engrafted upon the old statutes of Ph. & M., that there must be full opportunity of cross-examination. The recent statute provides that, when any person is charged with any indictable offence, the magistrates are to take the examinations of the persons who understand the case—that is, not the particular technical charge, but the facts and circumstances; and then, if upon the trial of the person "so accused as first aforesaid," that is, of the person accused of an indictable offence arising out of those circumstances, it be proved that the witness is dead or too ill to travel, the deposition may be given in evidence, if it also be proved that the accused had full opportunity of cross-examination; and we should do great injustice if we were to restrict the operation of that salutary provision. The presiding judge must determine in each case whether the prisoner has had full opportunity of cross-examination; and if the charges were entirely different, he would not decide that there had been that

opportunity; but where it is the same case, and only some technical difference in the charge, the accused generally has had full opportunity of cross-examining.

ALDERSON, B.—The question really is, whether the deposition was taken under such circumstances that the accused had full opportunity of cross-examination; and in *R. v. Ledbetter*, it may have been that he had not. There, before the magistrates, the prisoner was charged with a common assault only; but he was indicted for wounding with intent to do grievous bodily harm; and upon the two charges very different questions might arise. Upon the former, there would be no question as to the intent or as to the nature of the wound; whilst, upon the latter, questions as to both might be very material. We, therefore, give no opinion that Mr. Greaves was wrong in that case, which, very likely, turned upon the question whether the offence of wounding had been completed. Here the utmost ingenuity cannot suggest any different question as arising out of the two charges: the subsequent death of the prosecutor is the only change in the circumstances, and if the deposition cannot be received in this case, it never could be received in any case, where the injury inflicted results in death between the examination and the trial, and the question that arose in *R. v. Radbourne* never could arise. I am clearly of opinion that there was in this case that full opportunity of cross-examination which the statute requires.

COLERIDGE, J.—If we were to decide otherwise it is obvious Judgment that the statute would have no effect as to the depositions of deceased persons in cases of murder and manslaughter.

MARTIN, B.—If ever there was a case settled by authority it is this; and I cannot entertain a doubt that before the recent statute this deposition would have been admissible; and that that statute has not altered the law in that respect. In *R. v. Radbourne*, ten judges held the deposition of the deceased admissible on a trial for murder; and again in *R. v. Smith*, ten out of the eleven judges, who met to consider that case, adopted the same rule. Then the act of Parliament contains nothing to alter the law; and, indeed, the words of the enactment itself seem to me to render the deposition admissible. It is a mistake, I think, to suppose that the words "as evidence in such prosecution" necessarily mean "on the same identical charge."

CROWDER, J.—The authorities seem quite decisive as to the rule of the common law; and under the statute also, I think this deposition was admissible. The object of the statute was not to restrict but to enlarge the common law; and according to the proper construction of that enactment it appears to me that the deposition may be received if the prisoner has had full opportunity of cross-examination, though the form of the charge may not be precisely the same.

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Conviction affirmed.

COURT OF CRIMINAL APPEAL.

December 2, 1854.

(Before JERVIS, C. J., POLLOCK, C. B., PARKE, B., MAULE, J., WIGHTMAN, J., PLATT, B., ERLE, J., MARTIN, B., and CROMPTON, J.)

REG. v. WILLIAM CORNISH.(a)

Larceny—Delivery of goods to carrier—Bailment not determined.

A. was employed by B. as a carrier, to cart a cargo of coals from a ship to a neighbouring coal-yard, and thence to another yard belonging to B., at a considerable distance. A. carted the coals to the neighbouring yard, and was engaged for several days in carting them to B.'s other yard. On one of those days he left the first-mentioned yard with two carts and a waggon laden with coals; but before he arrived at the other yard he fraudulently delivered the two cart loads to a third person, on his own account. The waggon load he delivered at the prosecutor's yard.

Held, that A. was not guilty of larceny; the coals having been delivered to him as a carrier, and the bailment not having been determined by breaking bulk or otherwise.

THE following case was reserved from the Cornwall Sessions:—
The prisoner, William Cornish, was tried at the Michaelmas Sessions, 1854, for the county of Cornwall, upon an indictment charging him jointly with Thomas Roscorla, with stealing on the 6th day of October then instant, at Saint Columb, in the county of Cornwall, two tons of coal, the property of William Ford Geake and others.

The prosecutor contracted with the prisoner, William Cornish, who keeps carts and horses, and hires himself out as a common carrier, to carry a cargo of coals from a ship at Porth, in the said county, to a coal-yard there, which the prosecutor rented for the purpose of lodging the coal, and from thence to carry the coals to a yard of the prosecutor's in the town of Saint Columb aforesaid, a distance of about six miles. The prisoner, William Cornish, employed the said Thomas Roscorla, who also keeps a cart and horses, to assist him. The coals were unloaded by them and carted to the prosecutor's yard, at Porth aforesaid. The prisoner, William Cornish, was engaged for several days carting the coals

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

from thence to the prosecutor's yard at Saint Columb; and on the day mentioned in the indictment he left the yard at Porth with his son and the said Thomas Roscorla, driving two carts and one waggon, laden with coals, towards Saint Columb. When near the top of the town of Saint Columb, the prisoner, William Cornish, directed his son and the said Thomas Roscorla, to take the two cart loads of coal to a Mr. Davey's (who had not ordered them), where the prisoner William Cornish also went and delivered the coals, putting the value of the coal to an account he had with Davey. He the prisoner, William Cornish, delivered the waggon load of coals at the prosecutor's yard in Saint Columb. No communication was made by the prisoner that he had so done, to Mr. Geake the prosecutor.

It was objected by the counsel for the prisoners, that under these circumstances no larceny was committed by them. I reserved the point. The jury found the prisoner, William Cornish, guilty. Thomas Roscorla was acquitted. Judgment on the prisoner, William Cornish, was postponed, and he was subsequently discharged on recognizance of bail to appear and receive judgment.

I have to request the opinion of the Court of Criminal Appeal whether the conviction can be supported.

(Signed by the Chairman.)

The case was not argued by counsel.

JERVIS, C. J.—The conviction in this case cannot be supported. The case expressly states that the coals were delivered to the prisoner as a carrier; he was bailee, therefore, and the dishonest delivery to Mr. Davey of the two cart loads does not make him guilty of larceny.

PARKE, B.²—It is quite clear. There was no breaking of bulk, so as to determine the bailment.

The other judges concurred.

Conviction quashed.(b)

(b) It does not appear on what ground the prisoner's counsel contended that the offence was not larceny. The only doubt that could be suggested upon the authorities seems to be this—whether there was not a general bailment of the whole cargo, which was determined as soon as the prisoner had separated any part from the rest and delivered it at the wrong place. In *R. v. Howell* (7 Car. & P. 325), the prisoner was indicted for stealing three staves of wood, and it appeared that the prosecutor, who was the owner of a vessel laden with timber, employed the prisoner, who had a boat, to carry the staves in question, as well as other staves, ashore in that boat. Two of the staves the prisoner concealed at the bottom of his boat, and one which he landed he carried to his mother's house. Patteson, J. said, "I think that this was a case of bailment, although the prosecutor's servants were on board, because they were there under the prisoner's control. That being so, if the prisoner had not taken the staves out of the boat, the mere non-delivery of them would not have amounted to larceny; but the prisoner separating one of the articles from the rest, and taking it to a place different from that of its destination, was, if he did it with intent to appropriate it to his own use, equivalent to breaking bulk; and therefore would be sufficient to constitute 'larceny.'" Again, in *R. v. Poyser* (5 Cox C. C. 241; 20 L. J. 191, M. C.), it appeared that the prisoner was employed by the prosecutor to sell clothes for him; and that on a particular day he received a parcel of clothes for that purpose. The prosecutor fixed a separate price upon each article; and the prisoner was to be paid a per

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centage upon the amount received, and to bring back the unsold clothes. The prisoner fraudulently pawned some of the clothes and kept the rest for his own use; and the judges held that he was properly convicted of larceny; because there was a single bailment of all the articles and the misappropriation of part determined the bailment as to the rest. So in 1 Hawk. P. C. c. 33, s. 4, citing 1 Hale, 505, and other authorities, it is said: "And agreeably hereto it has been resolved that even those who have the possession of goods by the delivery of the party may be guilty of felony, by taking away part thereof with an intent to steal it; as, if a carrier open a pack and take out part of the goods; or a weaver who has received silk to work; or a miller who had corn to grind, take out part with intent to steal it; in which cases it may not only be said that such possession of a part distinct from the whole was gained by wrong and not delivered by the owner, but also that it was obtained basely, fraudulently and clandestinely, in hopes to prevent its being discovered at all, or fixed upon any one when discovered." In *R. v. Brazier* (Russ. & Ry. 337), it was held that a warehouseman, who having received forty bags of wheat for safe custody only, took all the wheat out of eight bags and sold it, and then filled the eight bags with inferior wheat, was guilty of larceny, the judges being unanimously of opinion that taking the whole out of any one bag was not less a larceny than taking a part. Substituting the two cart loads of coal in the principal case for the eight bags of wheat in the case cited, the latter seems to be in point; because the dishonest delivery of the coals was as tortious an act in the one case as the emptying of the sacks was in the other. It is true that, in the one case, the wheat was delivered to the prisoner in bags, from which he had no right to remove it; and in the other the coals had been put into the carts by the prisoner, and he might have removed them into any other carts for the purpose of performing his contract; but the distinction is very refined. If there was a breaking of bulk by removing the wheat out of the sacks,—was there not also a breaking of bulk by separating two cart loads of coal from the rest of the cargo? The case put in 3 Inst. 107, of a bale or pack of merchandise being delivered to one to carry to a certain place, appears distinguishable. There, if the package is parted with in the state in which it was delivered, there is no trespass while the package remains in the prisoner's possession, and, therefore, no larceny; but if he breaks open the package, there is. Where a single package only is delivered, or where several are delivered, but there is a distinct bailment as to each, that reasoning applies clearly enough. Where several distinct packages are delivered, the bailment would generally be considered as applicable separately to each package; and not as a single bailment of the whole, as was held in *R. v. Poyser*, under the particular circumstances of that case. Thus, in *R. v. Pratley* (5 Car. & P. 133), where three trusses of hay were sent by the prisoner's cart and he took away one, Parke, J. said, "This is no larceny, as the prisoner did not break up the truss." (See also *R. v. Fletcher*, 4 Car. & P. 545.) A somewhat different consideration seems, however, to apply to the carriage of a cargo of coals or other merchandise not made up into packages, and of which there can be no other breakage of bulk than by the abstraction of part; and if it were not for the decision pronounced in the principal case there might, perhaps, be some ground for contending that in the act of unlawful separation there is a trespass, which being committed *animo furandi*, would constitute larceny, and also according to *R. v. Poyser*, that the misappropriation of any part would determine the bailment as to the rest. See also *R. v. Maddox* (R. & Ry. C. C. 92), where the master of a ship who had sold several casks of butter, which were delivered to him to carry, and were carried on deck, was held not guilty of larceny, because it did not appear that the casks had been opened; but some intimation of opinion was given that if any casks had been taken out of the hold, where the greatest number were stowed away and battened down, that would have been a breaking of bulk.

COURT OF QUEEN'S BENCH.

November 18, 1854.

REG. v. THE INHABITANTS OF NETHER HALLAM.(a)

Highway—Indictment for nonrepair—Former conviction—Estoppel—Evidence—Award of inclosure commissioners.

Upon the trial of an indictment against parish A. for the nonrepair of a highway, it appeared that A. had always repaired the road in question, which passed over waste ground in the parish of B., and connected together two separate portions of A. In 1785, the inhabitants of A. submitted to an indictment for nonrepair of the same road, and paid a fine. In 1788, inclosure commissioners acting under the authority of a statute for inclosing the commons, moors, and waste grounds within the parish of B., made an award, whereby they set out the road in question as situate in B. and to be repaired by B. No dispute as to the boundary of the two parishes was brought before the commissioners, nor did they assume to settle any question of boundary; but they acted under the power conferred upon them, of setting out public and private roads over the moors, commons, and waste grounds in B.

After the award, as before, the inhabitants of A. continued to repair: Held, that the former conviction was conclusive evidence against A. that the road was situate in that parish; and that the commissioners, having no jurisdiction to set out a road not situate in B., their award did not shift the liability from A. to B.

INDICTMENT for the nonrepair of a part of a highway leading from the township of Upper Hallam into, through, and over the township of Nether Hallam to the township of Sheffield, the part out of repair being 1218 yards in length, and twelve yards in breadth.

Plea—Not guilty.

At the trial before Wightman, J., at York, a verdict was taken for the Crown, subject to the opinion of this court upon the following case.

The parish of Sheffield, in the West Riding of the county of York, is divided into six townships, viz:—the township of Ecclesall, or otherwise Ecclesall Bierlow, Sheffield, Nether Hallam, Upper Hallam, Brightside Bierlow, and Attercliffe-cum-Darnell.

Before and at the time of the passing of the Inclosure Act hereinafter referred to, there was, between the termini in the indictment mentioned, an open unenclosed carriage-way over a large waste in the township of Ecclesall, called Cook's-moor, and coloured green in the two plans marked respectively B. and E.

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

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That road has, at all times within memory, been repaired by the inhabitants of the said township of Nether Hallam, until the month of January, 1852, and was and is the road by which two separate portions of the said township of Nether Hallam were and are connected; but there is no evidence to show whether that fact was the consideration, or whether any other consideration was given for Nether Hallam so repairing such road, but which has been repaired by the inhabitants of the said township, in ignorance (as they allege) and under a mistaken notion of their liability to repair, unless the facts hereinafter stated prove the contrary. There is no evidence of repair by any other township.

As regards all the roads in the parish of Sheffield, it is the custom for each township to repair its own highways, with the exception of two highways, one in Sheffield and the other in Nether Hallam, both of which are maintained by the parish at large.

In 1779 an Act of Parliament (19 Geo. 3, c. 88, private) was passed, intituled "An Act for dividing and enclosing the several Commons, Moors, and Waste Grounds within the Manor and Township of Ecclesall, in the parish of Sheffield, in the West Riding of the county of York." The manor and township are coterminous. By the said act, after reciting amongst other things, that there then were within the said manor and township of Ecclesall several open commons, moors, and waste grounds, certain commissioners were appointed for setting out, dividing, and allotting the said commons, moors, and waste grounds, and for putting the act in execution; and the said act, after providing for a survey and admeasurement of the lands and grounds intended to be inclosed, contained, amongst others, the following enactments:—"That the said commissioners, or any two of them, shall set out and appoint such public and private roads and ways as they shall think convenient, in, over, through, and upon the said commons, moors, and waste grounds, so as such public roads be of the breadth of forty feet at the least between and exclusive of the fences, which public roads shall for ever thereafter be amended and repaired at the general expense of the inhabitants of the township of Ecclesall aforesaid, in the same manner as the present public roads within the said township are or ought to be repaired."

This enactment then made provision for the repairs of private roads, and was followed by this proviso: "Provided nevertheless that nothing herein contained shall authorise the said commissioners to turn or alter any of the turnpike roads within the said manor and township." The act then directed the commissioners to allot not exceeding two acres for the purpose of getting materials, for, amongst other uses, making the roads upon and within the said commons, the herbage of such allotments being thereby vested in the surveyors of the highways of the said township of Ecclesall Bierlow, in trust to let and set the same, and to apply the rents and profits thereof to the repairs of the public roads and ways within the said township; and such surveyor or surveyors is or are hereby required to account for such rents and profits in the

same manner as he or they is or shall be accountable for other moneys that may come to his or their hand or hands as surveyor or surveyors of the highways, and shall be under and subject to the like penalties for the neglect thereof."

The act contains provisions for the settlement of disputed boundaries of the said manor and township of Ecclesall, and adjoining manors and township or parishes; but there was not any dispute as to the boundaries between the said respective townships of Ecclesall Bierlow and Nether Hallam.

It was further enacted that, as soon as conveniently might be after the division and allotments should have been completed, the commissioner should draw up an award containing, amongst other things, proper orders and directions for making and laying out proper public highways and private roads, ways, cuts, drains, and passages in and through the premises.

By another enactment, it is provided that, if any person shall think him, her, or themselves aggrieved by anything done in pursuance of this act (other than and except certain orders and determinations, of which the commissioner's award was not one), he, she, or they may appeal to the quarter sessions for the said West Riding.

The commissioners appointed by the said act duly made and published their award on the 28th September, 1788, and the same was duly entered by them and enrolled at Wakefield on the 5th December, 1788, in pursuance of the provisions of the said act, and was not appealed against. After reciting, amongst other things, the said 4th section of the act of Parliament, the award proceeds thus:—Now we, the said commissioners, by virtue and in pursuance of the said recited act, have set out, and do hereby award, direct, and appoint the said several public and private roads and ways hereinafter mentioned, which we adjudge necessary and convenient to be made in, through, over, and upon the said commons, moors, and waste grounds, all which said public and private roads and ways are marked, laid out, and described in the map or plan hereunto annexed, and are as follows, that is to say: one public road or way from the east end of Rand-moor, eastwards into the road from Hallam and Crooks to Sheffield, which said road we have called Fullwood-road, &c., all which said roads and respective public roads and ways heretofore mentioned to be called Fullwood-road, Clarke-house-road, &c., we have set out of the breadth of forty feet between and exclusive of the fences.

The said award also, after reciting the above-mentioned enactment as to making an allotment to the surveyors of the highways, and in pursuance thereof, did make an allotment of two acres, part of the said commons, moors, and waste grounds, to the surveyors of the highways of the said township of Ecclesall Bierlow; and the same have ever since been held and enjoyed by the said surveyors for the time being.

On the 19th January, 1785, more than three years and a half before the making of the award, the inhabitants of Nether Hallam were indicted at the West Riding sessions for the non-repair of

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Fullwood-road, and at the next sessions held the 4th April, 1785, the township of Nether Hallam submitted, and was fined 130*l*, which was duly levied and paid. [That indictment was set out; it alleged that the highway leading from the village of Hallam Upper, in, through, and over the township of Hallam Nether to the town of Sheffield, and used, &c., to wit, for the space of 1,300 yards in length, and eight yards in breadth of the same highway, at the township of Hallam Nether aforesaid, from, &c., to, &c., was and yet is very ruinous; and that the inhabitants of the township of Hallam Nether have been accustomed and of right ought to repair.] The road called Fullwood-road in the above recited award, and therein set out and described, is the subject of the present indictment, and as to the width of twenty-four feet, is the subject of the indictment of January, 1785. It was out of repair at the time of the present indictment being preferred.

The questions for the opinion of the court are, first, whether, on the facts above stated, there is shown a good defence for the inhabitants of Nether Hallam to this indictment—assuming such defence to be open under the plea of not guilty; secondly, whether such defence is open under the plea of not guilty.

The verdict of guilty to be set aside and a verdict of not guilty entered according to the judgment of the court.

Argument.

Knowles (*Hardy* with him) for the Crown.—At the time of the passing of the Inclosure Act, the township of Nether Hallam was estopped from saying that the road in question was not in that township: (*R. v. The Inhabitants of Haughton*, 1 Ell. & Bl. 501.) [LORD CAMPBELL, C. J., referred to *Reg. v. Blakemore*, 21 L. J. 60, M. C.; 2 Den. & P. C. C. 419.] All the authorities are reviewed in *R. v. Haughton*, and the point clearly established that the prior conviction is conclusive evidence of the road being within the parish indicted. Then if this road is in Nether Hallam *cadit questio*; but it is said that the award of the commissioners shows conclusively that it is in Ecclesall. The commissioners, however, had no jurisdiction to deal with roads which were not in Ecclesall; and nothing that they have done can affect a road in Nether Hallam. The local act expressly limits their powers to the moors, commons, and waste grounds of Ecclesall; and at that time this was a known road in Nether Hallam. It is clear that the Legislature did not regard this road, which was repairable by Nether Hallam, as being in Ecclesall; because the act provides that the roads set out shall be repaired “at the general expense of the inhabitants of Ecclesall, in the same manner as the present public roads within the township are repaired.” If the road was in Ecclesall, it was clearly repaired by Nether Hallam; so that there would be two modes of repairing roads in Ecclesall, and it would be impossible to say how the roads set out under that provision should be repaired. LORD CAMPBELL, C. J.—Still the commissioners must be considered as having in fact set out this road as in Ecclesall. COLERIDGE, J.—And as having intended the two acres allotted to the surveyors to be applied towards its repair.]

But the defendants cannot say it is in Ecclesall. There is another clause also in the Inclosure Act, which could not have been intended to apply to an old road like this, viz., that which requires the owners for fourteen years to put up and maintain gates; which might be reasonable enough as to a road set out between new inclosures, but is not reasonable as to the road in question. [LORD CAMPBELL, C. J.—Is not the award binding until appealed against?] Not as to any matters in respect of which the commissioners have exceeded their jurisdiction; and here, for sixty-five years since the award, Nether Hallam has repaired: (*R. v. Haslingfield*, 2 M. & S. 588.) Further, the act gave the commissioners no power to alter or stop up ancient roads, and they have not pretended to do so. Here they assume to set out the old road; but their setting it out in their award does not alter the old liability. The old road still exists; and the township which was formerly liable is liable still: (*R. v. Cricklade*, 14 Q. B. Rep. 735.) [WIGHTMAN, J.—If the effect of this award is to throw the repair of this road upon Ecclesall, the Ecclesall people might have appealed.] The appeal clause would hardly apply to such a case; but in *R. v. Cricklade*, where the award of inclosure commissioners was held not to affect the old liability, there was a similar appeal clause.

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R. Hall (*Phipson* with him) contra.—The former indictment operates as an estoppel only as to eight yards in breadth; and, looking at the plans, there is no ground for saying that this road is in Nether Hallam, except the estoppel. Locally it does pass over the moors and waste grounds of Ecclesall, which the commissioners had jurisdiction to inclose; and now the present indictment alleges the road to be of the breadth of twelve yards; so that, supposing the defendants are estopped as to eight yards from saying that the road is not in their township, they are not estopped as to the other four; and then this is a road partly repairable by one township and partly by another; and the indictment is bad for not showing how much is repairable by the parish indicted: (*R. v. St. Pancras*, 1 Peake, N. P. C. 219.) [COLERIDGE, J.—But the defendants have repaired since the award.] That is only evidence of an admission by way of inference; and when the facts are shown, mere inference is set aside. The facts in *R. v. Haughton* were very different from the facts of the present case. [LORD CAMPBELL, C. J.—Had the inclosure commissioners power to shift the liability?] If in point of fact it was clear that this road was not situate within Ecclesall, the commissioners probably would have had no jurisdiction over it; but in fact this is a road over Ecclesall-common, and the estoppel upon Nether Hallam does not bind the commissioners. [LORD CAMPBELL, C. J.—Suppose the matter had been contested before the commissioners between Ecclesall and Nether Hallam, would not the former conviction have operated as an estoppel?] No; because the parties would not be the same; Ecclesall was no party to the former indictment. But Ecclesall is at all events bound by the award, whether there was a

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power of appealing or not. On the other hand, Nether Hallam knows nothing about the award, and goes on repairing in ignorance of it. *R. v. Haslingfield* is not in point.

LORD CAMPBELL, C.J.—It seems to me that, irrespective of the award, there is an overwhelming case against Nether Hallam, because there is the usage for a vast number of years, both before and since the award, and, in addition to that, the former indictment, to which Nether Hallam submitted, and which operates therefore as an estoppel. Without the award, it is quite clear that Nether Hallam is irrevocably fixed: the defendants, therefore, must rely entirely upon the award, and they must show that the commissioners had jurisdiction to change the locality of the road. Now the commissioners were empowered by the Act to settle questions of disputed boundary, but here there was no such dispute; and as far as other townships, except Ecclesall, are concerned, the award is *res inter alios acta*. It does not bind any but the inhabitants of Ecclesall, and has not, as it seems to me, any such efficacy as Mr. Hall ascribes to it; so that the liability which once existed remains as before.

COLERIDGE, J., concurred.

WIGHTMAN, J.—The question is, whether the commissioners can be considered as having acted within their jurisdiction, when by the award they appear to have determined that this highway was within Ecclesall. If it was not within Ecclesall, they had no jurisdiction: and there was overwhelming evidence that it was not.

Judgment for the Crown.(b)

(b) *R. v. Ecclesall*. This was an indictment against the inhabitants of the township of Ecclesall for the non-repair of the same road; but after the decision of the court in the above case of *R. v. Nether Hallam*, *R. Hall* on the part of the prosecution, declined to argue that Ecclesall was liable, understanding the court already to have decided that the Inclosure Commissioners had no jurisdiction to set out in their award the road in question, or to direct how it should be repaired. Lord Campbell, C. J., Yes; that is the *ratio decidendi* in *R. v. Nether Hallam*. Judgment was, therefore, given for the defendants.

OXFORD CIRCUIT.

SHROPSHIRE SUMMER ASSIZES, 1853.

Shrewsbury, July 25.

(Before Mr. JUSTICE CROMPTON.)

REG. v. YATES AND ANOTHER.(a)

*Conspiracy to extort money—Evidence—Sufficiency of count—
Statute 6 & 7 Vict. c. 96.*

A count charged the defendant with a conspiracy, by false pretences and subtle means and devices, to extort from T. E., one sovereign, his moneys, and to cheat and defraud him thereof; the evidence failed to prove that the defendant employed any false pretence in the attempt to obtain the money.

Held, that so much of the count might be rejected as surplusage, and the defendants convicted of the conspiracy to extort and defraud.

Counts under the stat. 6 & 7 Vict. c. 96, s. 3, charging the defendants with unlawfully offering to prevent the publishing, and with threatening to publish certain matters touching the prosecutor, with intent to extort money :

Held, not to be supported by evidence, that the defendants attempted to obtain the money by leading the prosecutor to believe that an information would be laid against him by one G., for an offence relating to the post-horse duties, and that they had the means of preventing the proceedings and would prevent it on being paid a sum of money.

THE first count of the indictment alleged that the defendants, George Yates and John Wynne, on the 10th day of July, A.D. 1853, wickedly and maliciously devising and intending unjustly to vex and aggrieve one Thomas Evans, and to deprive him of his good fame, name, credit, and reputation, wickedly and unlawfully, at the parish of St. Andrew, in the county of Salop, did conspire, combine, confederate and agree together to extort money from the said Thomas Evans, by falsely and without any reasonable and probable cause, accusing the said Thomas Evans of having defrauded Her Majesty's Inland Revenue, to the great injury and damage of the said Thomas Evans.

The second count charged that the defendants on the day aforesaid, &c., did conspire, combine, confederate and agree together, by divers false pretences and subtle means and devices, to extort from

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

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the said Thomas Evans one sovereign of the moneys of the said Thomas Evans, and to obtain and to acquire to themselves the said moneys, and to cheat and defraud him thereof to the great damage of the said Thomas Evans.

The third count alleged that the defendants conspired and combined together, by divers false pretences, to obtain one sovereign from the said Thomas Evans, and to cheat him of it.

The fourth count alleged that the defendant offered to prevent the publishing of a certain matter touching the said Thomas Evans, with intent to extort money from him, against the form of the statute in such case made and provided.

The fifth count was for *threatening to publish* a certain matter touching him, with the like intent.

Thomas Evans, the prosecutor, was a livery-stable keeper in Shrewsbury, and kept flys for hire. A man named Gregory had been in his employment, but had been discharged sometime before the 10th of July, 1853. On that day the defendant Yates met the prosecutor at a hairdresser's in the town, and told him that Gregory was going to give information to the Excise for his (Evans) driving his horse and fly more miles than were entered on the duty ticket, and cheating the revenue, and added, that the penalty was 50*l.*, but it could be settled for a pound or two. The prosecutor said he did not fear it, and left the shop. The two defendants went the same afternoon to the prosecutor's, and Yates repeated what he had said in the morning. The prosecutor said there was nothing wrong on his part that he was aware of. Yates replied that Gregory was likely to swear it, and the prosecutor was liable to the fine if his horse had been taken beyond the distance mentioned in the ticket, although he had not driven it himself, and if Gregory could get the customers who had hired the fly, to swear for him, nothing could get over it, adding "you had better give a sovereign to make it up, for what is a sovereign to 50*l.*?" The prosecutor asked Yates what he had got to do with it? He replied that Gregory had put it all in his hands, and if the prosecutor would give him (Yates) a sovereign, he would put it all straight. The defendant Wynne, was present the whole time, and repeated the observations of Yates, and urged the prosecutor to make it up. The latter, however, refused, saying he did not know what there was to make up.

The defendants made similar statements to the prosecutor's wife, and brother-in-law, and suggesting that it would be much better to make it up for a trifle. Wynne said, if the prosecutor would pay a sovereign, they would get Gregory to sign a paper that what he had stated was false, but unless it was settled, Gregory had the particulars of several journeys written down, with the days of the month, "and nothing could beat him."

It appeared that on the 12th of July, Gregory went to the Supervisor of Excise, and made a complaint against the prosecutor. The officer made inquiries, and finding the statements were incorrect, took no further steps in the matter.

Scotland, for the defendants, at the close of the case for the prosecution, objected that there was no evidence to go to the jury. With respect to the first count, there is no evidence that the defendants accused Evans of defrauding the revenue. They merely stated what Gregory said and intended to do. With respect to the second count, there was no evidence of any conspiracy to extort money by false pretences. The defendants said Gregory was going to lay an information, and that was true, for he afterwards did make the attempt. The third count was in substance the same as the second, only using the word "obtain" instead of "extort." "Extort" bears no criminal aspect in itself. As to the fourth and fifth counts, there is no evidence that the defendants offered to prevent the publication of any matter.

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Huddleston, for the prosecution.—The first count alleges a combination to extort money by a false charge of defrauding the revenue. It was true the defendants did not say they made the charge, but they, in fact, made Gregory their instrument for that purpose, and he was, as they said, in their power. As to the second and third counts, it is sufficient if the jury find there was a conspiracy to extort. The allegation of false pretences may be rejected as surplusage. *Reg. v. Hollingberry* (4 B. & C. 329.) There an indictment charged the defendants with conspiring falsely to indict A. B. with intent to extort money, and the jury found them guilty of conspiring to indict with that intent, but not falsely; and it was held that enough of the indictment was found to enable the court to give judgment. *Rex v. Rispal* (3 Bur. 1320), also shows that the gist of the offence is the conspiracy to injure. The remaining counts are framed under the statute 6 & 7 Vict. c. 96 (known as Lord Campbell's Act), sect. 3 of which enacts that "if any person shall publish, or threaten to publish any libel upon any other person, or shall directly or indirectly threaten to print or publish, or shall directly or indirectly propose to abstain from printing or publishing, or shall directly or indirectly offer to prevent the printing or publishing, of any matter or thing touching any other person, with intent to extort any money or security for money, or any valuable thing from such or any other person, or with intent to induce any person to confer or procure from any person any appointment or office of profit or trust, every such offender, on being convicted thereof, shall be liable to be imprisoned, with or without hard labour, in the common goal or house of correction, for any term not exceeding three years: Provided always, that nothing herein contained shall in any manner alter or affect any law now in force in respect of the sending or delivery of threatening letters or writings."

CROMPTON, J.—I think there is no evidence except as to the second and third counts. My doubt as to those counts is whether the allegation of false pretences may not be rejected as surplusage. There being no evidence that the defendants made any false statement, is it a good count merely to charge a conspiracy to extort?

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Scotland, in reply.—If an allegation of conspiracy to extort with intent to cheat and defraud be held sufficient, it carries the law further than it has hitherto gone. In *Reg. v. Rowlands* (5 Cox Crim. Cas. 469), the sufficiency of such counts were considered, it was doubted by the Court of Queen's Bench whether an allegation of a conspiracy to unlawfully intimidate workmen who were named, and to prevent their following their trade, was not too vague. In the forms of indictments given in Cox's Crim. Cas. vol. 6, Appendix lxiii., after giving the form of a count, charging a conspiracy by A. B. and C. D., to obtain and acquire to themselves, by divers false pretences, from F., divers sums of money, and to cheat and defraud him thereof, it is said in a note: "This is the most general form of indictment that can be safely drawn." "Extort" does not import any criminal act unless when used in some statute with reference to a particular offence.

CROMPTON, J.—I shall leave the case to the jury on the second and third counts. I think an indictable offence is charged in those counts without reference to the false pretences. I shall tell the jury that it is not necessary to prove the false pretence, and that there is evidence on those counts. I hold that the words "false pretences" may be rejected as surplusage on the general rule that in torts it is sufficient to prove enough to sustain the count or indictment. As to the first count, there is clearly no evidence, and I think the allegations in the fourth and fifth counts are not borne out by the evidence.

The learned judge having occasion to consult Mr. Justice Coleridge, sitting in the other court, on some arrangement for the disposal of the business of the assizes, said he would take the opportunity of asking his learned brother's opinion as to the correctness of his ruling in this case. On his return he intimated to *Scotland* that he must address the jury on the second and third counts.

Scotland having done so, the learned judge summed up in conformity to his expressed opinion, and the jury found the prisoners guilty on the second and third counts.

Ireland.

DUBLIN COMMISSION COURT, GREEN-STREET.

JUNE SESSIONS, 1854.

June 20.

(Before PENNEFATHER, B., and MOORE, J.)

REG. v. MATTHEW LYNCH.(a)

Embezzlement—Employment necessary to constitute the offence—Porter occasionally employed.

A porter employed occasionally by a butter-factor to leave goods with purchasers, who is paid by the persons to whom the goods are delivered, is in the employment of such factor, and if he appropriate the money which he receives to be paid over to such factor in the course of his duty, he may be indicted for embezzlement.

When a person so employed keeps out of the way after receiving the purchase money of goods delivered by him, and is arrested after the expiration of several weeks, such evidence will be sufficient to show an appropriation by the prisoner of the money, although no evidence has been given as to the time within which he should account.

THE prisoner was indicted for embezzlement. From the evidence it appeared that prisoner, who was a porter employed by a butter factor, had on the 23rd and 26th of May last, left with the purchasers two firkins of butter, for which he had been paid and never accounted. Each person to whom the prisoner delivered the butter paid him a small sum for the carriage, according to the custom of the trade. The prosecutor stated that the prisoner never got any regular wages from him, that he was always paid by the job. That the prisoner did nothing for him except leave the butter at home with the purchasers, and occasionally assist him in small jobs. That the prosecutor never paid anything for delivering the butter, and that the only occasions on which he paid the prisoner was for bringing them home for him from the railways, and that the prisoner did not reside in his house.

To the Court.—It is part of his duty to take the money for the butter, and bring it home to me.

Sidney, for the prisoner.—This cannot be embezzlement. The prisoner is not in that relation to the prosecutor which would be

(a) Reported by P. J. M'KENNA, Esq, Barrister-at-Law.

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necessary to constitute this offence. He is the servant of the public. He is not paid by the prosecutor. This is like the drover's case referred to in Archbold's Criminal Law (title "Embezzlement,") and reported in 8 C. & P.

MOORE, J.—It appears to me, on the evidence, that the prisoner was employed to do two things. He was to bring home parcels to his employer's house, and to deliver parcels to his customers for him, and that he must therefore be considered in the employment of this butter factor, and within the statute.

Sidney.—There was no concealment on the prisoner's part of his having received this money, which seems a necessary ingredient in this offence. It was merely neglecting to account, and there is no evidence as to the time for accounting, even if he is held to be in the employment of the prosecutor.

MOORE, J.—As to his being a servant of the prosecutor, we have already ruled that point. Certainly, receiving money and not forthwith accounting for it does not amount to embezzlement. You are to get from all the facts of the case, whether or not there has been an appropriation of the money. You may come to the conclusion from the lapse of time, that it was not a mere neglecting to account, but you have further the fact that, after getting this money, he absconded, and did not come back until he was in custody. You may infer that he intended to appropriate this money, and if so he is guilty of the crime with which he is charged.

J. A. Curran for the prosecution.

The prisoner was found guilty.

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DUBLIN COMMISSION COURT, GREEN-STREET.

JUNE SESSIONS, 1854.

June 20.

(Before PENNEFATHER, B., and MOORE, J.)

REG. v. ELLEN MURTAGH.(a)

*Evidence—Admission by prisoner examined upon oath on official inquiry
—Illiterate person.*

Statements made by a prisoner who is an illiterate person when examined upon oath on an official inquiry held under the Poor Law Act, 10 & 11 Vict. c. 90, s. 19, cannot be used as evidence against such prisoner for the purposes of the trial.

The prisoner was indicted for a misdemeanor in making a false declaration concerning a child admitted to the workhouse. On an investigation being subsequently made, the prisoner, who was a markswoman, was examined by the Poor Law Inspector, under the powers given him by the 19th and 20th sections of 10 & 11 Vict. c. 90, and made, amongst others, certain statements as to the declaration, the subject of the prosecution.

Held, that such statements were not admissible to prove the making of the declaration by the prisoner, or to identify her as the person who had made and subscribed it.

THE prisoner was indicted for a misdemeanor at common law in making a false declaration; there was a second count for an offence under the statute.

The magistrate who had taken the declaration, and the office clerk of the police office were examined, and proved that the declaration produced was made by a woman describing herself as Ellen Murtagh, and that she affixed her mark to it, but were unable to identify the prisoner. The statements contained in the declaration subsequently became the subject of an inquiry held by one of the Poor Law Inspectors, under the authority of the 19th and 20th sections of the Irish Poor Law Act, 10 & 11 Vict. c. 90. Upon that enquiry the prisoner was examined upon oath respecting the declaration in question, and her answers were reduced to writing in the minute book which was produced, and to which she had affixed her mark.

(a) Reported by P. J. M'KENNA, Esq., Barrister-at-Law.

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Sidney, for the prosecution, now proposed giving this in evidence, and asking the witness whether or not the prisoner had admitted having made the declaration taken by the magistrate.

J. A. Curran, with whom *W. Gernon* for the prisoner, objected to this evidence.

PENNEFATHER, B.—The prisoner was sworn, and what she said in answer to the questions asked her was under the compulsion of an oath. Let us see under what circumstances this admission which you seek to give in evidence against the prisoner was made. It appears she was a witness, and was not cautioned that what she said would be used against her. I do not think we should admit such evidence.

Sidney.—Suppose we were indicting her for perjury committed by her in giving evidence upon a trial, could we not examine as to the statements by her upon the witness table?

PENNEFATHER, B.—That is another question entirely. Here are answers given by an illiterate person who has not been cautioned.

Gernon.—The 20th section of the Poor Law Act provides that, “every person who shall refuse or wilfully neglect to attend in obedience to any summons of the commissioners, or of any one of the commissioners or any inspector, or to give evidence, &c. shall be deemed guilty of a misdemeanor.” This shows that the prisoner was under compulsion, and renders it impossible to admit her evidence on that occasion against her for the purposes of this trial. Her being an illiterate person would render it most unfair, that her evidence with regard to a document which she could not read should be used against her.

Per Curiam.—We cannot admit this evidence.

There being no other evidence on this point, the jury were directed to acquit the prisoner.

The solicitor for the prosecution, at the close of the case, asked to have the declaration given up to him as the property of the guardians.

Curran objects.

PENNEFATHER, B.—The Clerk of the Crown is bound to take care of it as a record of the court. You might as well ask for the indictment. Of course he will allow you to see it and take any copy you may require, and produce it whenever it may be necessary.

COURT OF CRIMINAL APPEAL.

January 20, 1855.

(Before LORD CAMPBELL, C. J., COLERIDGE, J., CRESSWELL, J.,
PLATT, B., and WILLIAMS, J.)

REG. v. THOMAS DOLAN AND ANOTHER. (a)

Felonious receipt of stolen goods—Effect of restoration to the owner between the stealing and the receiving—Subsequent sale with the owner's privity.

If stolen goods are restored to the possession of the owner, and he returns them to the thief for the purpose of enabling him to sell them to a third person, they are no longer stolen goods, and that third person cannot be convicted of feloniously receiving stolen goods, although he received them, believing them to be stolen.

Where, therefore, stolen goods were found in the pocket of the thief by the owner, who sent for a policeman; and it was proved that after the policeman had taken the goods, the three went together towards the prisoner's shop, where the thief had previously sold other stolen goods; that when near that shop the policeman gave the goods to the thief, who was sent by the owner into the shop to sell them; and that the thief accordingly sold them to the prisoner, and then returned with the proceeds to the owner:

Held, that the prisoner was not guilty of feloniously receiving stolen goods; inasmuch as they were delivered to him under the authority of the owner by a person to whom the owner had bailed them for that purpose. R. v. Lyons, Car. & M. 217, overruled.

Semble, per Cresswell, J.: That the mere possession of the goods by the policeman would not be equivalent to a restoration to the owner.

THE following case was stated by M. D. Hill, Esq., Q. C., Recorder of Birmingham:

At the sessions held in Birmingham, on the 5th day of January, 1855, William Rogers was indicted for stealing, and Thomas Dolan for receiving, certain brass castings, the goods of John Turner. Rogers pleaded guilty, and Dolan was found guilty.

It was proved that the goods were found in the pockets of the prisoner Rogers by Turner, who then sent for a policeman, who took the goods and wrapped them in a handkerchief, Turner, the prisoner Rogers, and the policeman going towards Dolan's shop. When they came near it the policeman gave the prisoner Rogers

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

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the goods, and the latter was then sent by Turner to sell them, where he had sold others; and Rogers then went into Dolan's shop, and sold them, and gave the money to John Turner as the proceeds of the sale. Upon these facts it was contended on the part of Dolan, that Turner had resumed the possession of the goods, and that Rogers sold them to Dolan as the agent of Turner, and that consequently, at the time they were received by Dolan, they were not stolen goods within the meaning of the statute.

I told the jury, upon the authority of the case of *Reg. v. Lyons and another*, Car. & Mar. 217, cited by the counsel for the prosecution, that the prisoner was liable to be convicted of receiving, and the jury found him guilty.

Upon this finding, I request the opinion of the Court of Appeal in Criminal Cases on the validity of Dolan's conviction.

Dolan has been sent back to prison, and I respited judgment on the conviction against him until the judgment of the court above shall have been given.

O'Brien for the prisoner.—This conviction cannot be sustained. The objection is, that when the goods reached the hands of Dolan they were not stolen goods. They had been restored to the possession of the owner, and the sale to the prisoner was with the owner's authority.

Argument.

LORD CAMPBELL, C. J.—There seems to be great weight in that objection, but for the authority of the case cited. It can hardly be supposed that if goods were stolen seven years ago, and had been in the possession of the owner again for a considerable period, there could be a felonious receipt of them without a fresh stealing.

O'Brien.—That was the view taken by the learned Recorder; and *R. v. Lyons*, Car. & M. 217, which was cited for the prosecution, does not appear to have been a case much considered. Coleridge, J., in that case, said "that for the purposes of the day, he should consider the evidence as sufficient in point of law to sustain the indictment, but would take a note of the objection."

COLERIDGE, J.—I certainly do not think so to-day.

O'Brien.—There is also a slight circumstance of distinction between that case and the present. It does not appear in that case that the stolen property was ever actually restored to the hands of the owner, nor that he expressly directed the thief to take it to the prisoner. (He was stopped.)

Beasley for the prosecution.—*R. v. Lyons* is expressly in point, and the learned Judge who decided it does appear to have had his attention recalled to the point after the conviction, and still, upon deliberation, to have thought there was nothing in the objection. The facts are thus stated in the marginal note:—"A lad stole a brass weight from his master, and after it had been taken from him in his master's presence it was restored to him again with his master's consent, in order that he might sell it to a man to whom he had been in the habit of selling similar articles which he had stolen before. The lad did sell it to the man; and the man being indicted

for receiving it of an evil-disposed person, well knowing it to have been stolen, was convicted and sentenced to be transported seven years." The report adds, that after the sentence "the matter was subsequently called to his Lordship's attention by the prisoner's counsel, yet no alteration was made in the judgment of the court; from which it is to be inferred that, upon consideration, his Lordship did not think that in point of law the objection ought to prevail." The present is, however, a stronger case than that; because here in truth the master did not recover possession of the stolen goods. They were in the hands of the police; and what the master did must be considered as done under the authority of the police.

LORD CAMPBELL, C. J.—No; the policeman was the master's agent.

PLATT, B.—And the sale was by direction of the master.

Beasley.—The statute does not require that the receipt should be directly from the thief. It only requires that the prisoner should receive stolen goods, knowing them to have been stolen; and that is proved in this case. In many cases it has been held that where the owner of property has become acquainted with a plan for robbing him, his consent to the plan being carried out does not furnish a defence to the robbers: (*R. v. Egginton*, 2 Bos. & P. 508.)

LORD CAMPBELL, C. J.—But to constitute a felonious receiving, the receiver must know that at that time the property bore the character of stolen property. Can it be said that, at any distance of time, goods which had once been stolen would continue to be stolen goods for the purpose of an indictment for receiving, although in the mean time they may have been in the owner's possession for years?

CRESSWELL, J.—The answer to that in this case seems to be that the policeman neither restored the property nor the possession to the master; that the goods were in the custody of the law; and that the master's presence made no difference in that respect.

Beasley.—That is the argument for the prosecution; and it is manifest that if the policeman had dissented from the plan of sending Rogers to Dolan's shop, the master could not have insisted upon the policeman giving up the property to him.

LORD CAMPBELL, C. J.—I feel strongly that this conviction is Judgment. wrong. I do not see how it can be supported, unless it could be laid down that, if at any period in the history of a chattel once stolen, though afterwards restored to the possession of the owner, it should be received by any one with a knowledge that it had been stolen, an offence would be committed within the statute. I think that that would not be an offence within the statute, any more than it would make the receiver an accessory to the felony at Common Law. If the article is restored to the owner of it, and he, having it in his possession, afterwards bails it to another for a particular purpose of delivering it to a third person, and that third person receives it from that bailee, I do not see how it can, under

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these circumstances, be feloniously received from that bailee. Then what are the facts here? (His Lordship stated the facts as above.) Turner, the owner, therefore, had, I think, as much possession of the goods as if he had taken them into his own hands, and with his own hands delivered them to another person for a particular purpose, which was performed. He was, subsequent to the theft, the bailor, and the other person was the bailee of the goods. Then they were carried to the prisoner by the authority of the owner; and I cannot think that, under those circumstances, there was a receiving within the statute. As to the case cited, I cannot help thinking that the facts cannot be quite accurately stated, and that there was something more in that case than appears in the report; but if not, I am bound to say that I do not agree in that decision.

Judgment.

COLERIDGE, J.—I have no recollection of the case cited; and I have no right, therefore, to say that it is not accurately reported; but, assuming it to be so, I am bound to say that I think I made a great mistake there. What is the case? If for a moment the interference of the policeman is put out of the question, the facts are, that the goods which had been stolen were restored to the possession of the real owner, and were under his control, and having been so restored, they were put again into the possession of Rogers for a specific purpose, which he fulfilled. It seems, then, to me that when the second time they reached the hands of Rogers, they had no longer the character of stolen goods. Then, if that would be the case, supposing the policeman to be out of the question, does the interference of the policeman, according to the facts here stated, make any difference? I think not. It is the master who finds the goods, and sends for a policeman; and it is by the authority of the master that the policeman takes and keeps the goods, and afterwards hands them back to Rogers. Indeed, it seems to me that all that was done was done by Turner's authority; and that it must be considered that the property was under the control of the real owner when he sent Rogers with them to the prisoner. In this state of facts, the interference of the policeman seems to me of no importance.

CRESSWELL, J.—I do not dissent from the decision that this conviction is wrong; but as we are called upon in this court to give the reasons of our judgment, I must say that I cannot concur in all the reasons which I have heard given in this case. If it had been necessary to hold that a policeman, by taking the stolen goods from the pocket of the thief, restores the possession to the owner, I should dissent. I think that we cannot put out of question the interference of the policeman; and that whilst the goods were in his hands they were in the custody of the law; and that the owner could not have demanded them from the policeman or maintained trover for them. But as the case finds that the policeman gave them back to Rogers, and then the owner desired him to go and sell them to Dolan, I think that Rogers was employed as an agent of the owner in selling them, and, that consequently Dolan did not feloniously receive stolen goods.

PLATT, B.—I am of the same opinion. The case is, that the stolen goods were found by the owner in the pocket of the thief. They were restored to his possession, and it does not appear to me very material whether that was done by his own hands or by the instrumentality of the policeman. Things being in that state, it seems to have come into their heads that they might catch the receiver; and it was supposed that by putting the stolen property back into the custody of Rogers, they could place all parties *statu quo* they were when the property was found in the pocket of Rogers; but I agree with the rest of the court that the act of Parliament does not apply to a case of this kind; for if it did, I see no reason why it should not equally apply to restored goods stolen ten years ago.

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WILLIAMS, J.—The reason why I think the conviction wrong is, that the receipt, to come within the statute, must be a receipt without the authority of the owner. Looking at the mere words of the indictment, every averment is proved by this evidence; but then the question is, whether such a receipt was proved as is within the statute, viz., a receipt without the owner's authority; and here Rogers was employed by the owner to sell to Dolan.

Conviction quashed. (b)

(b) Beasley applied to the court to direct who should tax the costs of the appeal. They are allowed as part of the costs of the prosecution in the court below; but the question was whether they should be taxed by the officer of the Court of Appeal, or by the officer of the court below. The latter could not very well know what costs ought to be allowed in this court.

Lord Campbell, C. J.—We have no taxing officer in this court, and no jurisdiction to make any order about costs.

COURT OF CRIMINAL APPEAL.

January 20, 1855.

(Before LORD CAMPBELL, C.J., COLERIDGE and CRESSWELL, JJ.
PLATT, B., and WILLIAMS, J.)

REG. v. FERGUSON. (a)

Indictment containing a count for felony, and a count for a misdemeanor—Arrest of judgment.

A prisoner was arraigned upon an indictment, containing one count for felony and one for misdemeanor; and, having pleaded not guilty, was duly tried and convicted of felony:

Held, that the misjoinder was no objection to the conviction.

THIS was a case reserved by the Recorder of Manchester. It stated that the prisoner was arraigned upon an indictment containing two counts; the first for assaulting with intent to rob; and the second for a common assault. He pleaded not guilty; and the jury were sworn, and he had his challenges as upon an indictment for felony. The jury found him guilty of the felony; and then it was objected that the indictment was bad, because it contained a count for misdemeanor. The recorder overruled the objection, but reserved the question, whether the conviction could be sustained.

The case was not argued by counsel.

LORD CAMPBELL, C.J.—There is no difficulty about this case; and I regret that it should have been reserved. (His Lordship stated the facts as above, and added): It is the same thing as if the prisoner had been convicted upon an indictment containing a single count charging a felony, which the evidence proved him to have committed. It admits of no reasoning; there is no objection to answer.

COLERIDGE and CRESSWELL, JJ., PLATT, B., and WILLIAMS, J., concurred.

Conviction affirmed. (b)

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

(b) *R. v. Jones*, 2 Moo. C. C 94, is expressly in point.

COURT OF CRIMINAL APPEAL.

January 20, 1855.(Before JERVIS, C.J., ALDERSON, B., COLERIDGE, J.,
MARTIN, B., and CROWDER, J.)

REG. v. GIBBS. (a)

Embezzlement—Relation of master and servant—Carrier—Bailee.

A., a carrier residing at Somerton, was employed only in carrying gloves between the glove-sewers there and the manufacturers at Stoke. The sewers were not known personally to the manufacturers; but A. took to the latter the name of any woman who desired to be employed, and received for her a number of unsewed gloves. The gloves, when sewed, were brought back by A. in separate parcels, having the name of each sewer attached; and, if found correct, the whole amount due for the sewing was paid to him for the purpose of distribution among the sewers; but from the sum to be delivered to each he deducted his own charge. A. having received several sums for sewers' work, and fraudulently appropriated them, was convicted of embezzlement: Held, that upon these facts, the conviction could not be sustained, as the prisoner was a mere bailee, and not a servant to the sewers whose money he received, within the meaning of the statute against embezzlement.

THE following case was reserved by COLERIDGE, J.:—

The prisoner was tried before me at the last assizes for the county of Somerset, and convicted on an indictment for embezzlement. The first count charged him, as servant to Jane Dickinson, with embezzling 2s. 1½d. On the second no evidence was offered. On the third he was charged, as servant to Eliza Gould, with embezzling 3s.

Jane Dickinson and Eliza Gould were two, among many other makers-up and sewers of gloves, residing at Somerton. Messrs. Southcomb and Chard were glove manufacturers at Stoke-under-Hamden. The prisoner was a carrier residing at Somerton, and going from that place to Stoke and back, employed, however, only between the glove-sewers and manufacturers in carrying the gloves from and to the one and the other. The manufacturers at Stoke

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

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know nothing of the individuals at Somerton who sew and make up their gloves for them; but the prisoner gives the name of, and takes out a number for, any woman who desires to be employed, and receives a certain number of unsewed gloves from the manufactory. The sewers at Somerton each having her number, send back their gloves, when sewed, in separate parcels, each with their names pinned to the parcel, by the prisoner to the factory. He delivers the parcels; and if these are found correct, the total amount due is paid to him in one sum, and fresh parcels of unsewn gloves are delivered to him. His duty then is to deliver to each workwoman her money, deducting his charge, and her fresh work. The manufacturers, though they know nothing personally of the women to whom the gloves are sent, except by the numbers given, assuming their existence, look to them for the work; but if any work be missing, and the woman not found, they look to the carrier for it.

According to the course here stated, the prisoner had taken out numbers for Jane Dickinson and Eliza Gould, on June 7th; each of them had given him a parcel of sewed gloves to be taken to the manufacturers, which he duly delivered. Jane Dickinson's work entitled her to receive 2s. 1½d., Eliza Gould's entitled her to receive 3s.; and these sums, with several others in one sum, were paid to the prisoner in respect of such work. On his return they applied to him for their money and fresh work; he denied the receipt of any money for them, and fraudulently applied the sums to his own use.

These facts being clearly proved, a verdict passed for the Crown, and I sentenced the prisoner; but I request the opinion of the judges whether he was properly convicted of the crime of embezzlement.

The case was not argued by counsel, but stood in the list of cases for Michaelmas Term; and the court (Jervis, C.J., Alderson, B., Coleridge, J., Martin, B., and Crowder, J.) took time to consider its judgment.

COLERIDGE, J., now delivered the judgment of the court (after stating the facts as above).—In ordinary parlance, and according to the common acceptation of the term, it is impossible to describe the prisoner as a servant to any of the young women. The ordinary relation of master and servant cannot be said to subsist between them; they would certainly not be responsible for his negligence; and unless there were any decided cases precisely in point, we could not come to the conclusion that he was a servant to them within the meaning of the statute against embezzlement. There is no such decision; and, though some of the cases go very far in making persons liable, as servants, to punishment for embezzlement, none go so far as this. The prisoner was, in fact, a common carrier for all persons who chose to employ him within a limited district; and that is the case of all carriers, who are only bound to carry the description of goods, and between those places, of and between which they have publicly

professed themselves to be carriers, as is laid down by Lord Holt in *Lane v. Cotton*, 12 Mod. 484, and also in *Johnson v. The Midland Railway Company*, 4 Exch. 372. We consider, therefore, the prisoner in this case to have been a mere bailee, and the non-delivery by him a breach of trust only. The principle laid down in *R. v. Hey*, 1 Den. C. C. 602, is applicable here; the circumstances of the prisoner's employment as a drover in that case having been held to raise an inference that he was not a servant. We are consequently of opinion that this conviction is wrong.

Conviction reversed.

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(a) *R. v. Hey*. The prisoner, a drover by trade, was employed to take and deliver pigs to C. and bring back such price as G. should give for them. He had money given to him for expenses, for which he was to account; and by the custom of the trade he was to be paid so much per day for the number of days occupied. By the usage of the trade also, he was at liberty to drive for other persons at the same time. The question was whether he received the custody of the pigs as a servant to the persons who employed him, or as a bailee, and it was held upon the facts stated that he received them as bailee. In the judgment of the court, *R. v. M'Namee*, 1 Moo. C. C. 368, was referred to as the case most closely resembling the one then under consideration; and Parke, B., delivering that judgment, added: "In this case, on the one hand, the circumstance that the prisoner was paid the expenses of the cattle, and also that the customary mode of payment of his remuneration was by the day, tend to show that he was a mere servant; on the other hand, the fact of his being a drover by trade, and also of his having the liberty to drive the cattle of any other person, by the general usage with respect to drovers, raises an inference that he was not a servant." And after referring to *R. v. Hughes*, 1 Moo. C. C. 370, where the question was whether the prisoner was either a servant or a person employed in that capacity, his lordship proceeded: "This is not exactly the same question; it is whether the prisoner had the custody of the cattle as a servant to the prosecutor at the time of the receipt of them; and we think he could not be so considered unless in driving the cattle to the market he was his servant, and the prosecutor responsible for any negligent act of his in so driving them. This subject has undergone much discussion of late, and has been placed on its proper footing by the case of *Quarman v. Burnett*, 6 M. & W. 499, and other cases; one of which is that of a general drover, who was held in *Milligan v. Wedge*, 12 Ad. & E. 737, not to be a servant, so as to make the owner of the cattle responsible for his negligence. After the full consideration which this subject has undergone, we doubt whether the case of *R. v. M'Namee* would be now decided in the same way. Upon the whole, we think it was not proved in this case that the prisoner was a mere servant."

COURT OF CRIMINAL APPEAL.

February 3, 1855.

(Before JERVIS, C.J., PARKE, B., MAULE, J., WIGHTMAN, J.,
PLATT, B., WILLIAMS, J., and CROMPTON, J.)

REG. v. BURDITT AND OTHERS. (a)

Practice—Right of one prisoner to cross-examine the witnesses called by another prisoner jointly indicted with him, and to reply upon their evidence.

Where two prisoners are jointly indicted, and a witness called by one of them gives evidence criminatory of the other, the latter has a right, by himself or his counsel, to cross-examine that witness and address the jury in reply upon the evidence so given.

THE following case was reserved by the Deputy Chairman of the Northamptonshire Quarter Sessions.

At the General Quarter Sessions of the Peace for the County of Northampton, held on the 29th of June, 1854, Thomas Luck, Charles Burditt, and William Cox, were indicted and tried for stealing wood at Overstone, the property of Lewis Lloyd, Esq. They were defended by separate counsel.

At the close of the case for the prosecution, the court decided that there was no case to go to the jury against Cox, and he was acquitted.

Luck's counsel then addressed the jury; and afterwards Burditt's counsel addressed the jury for the prisoners.

Luck's counsel then called as a witness on behalf of Luck, Cox, who had been acquitted, with a view of showing that Luck was an innocent agent in taking the wood, and in so doing, gave evidence tending to criminate Burditt.

Burditt's counsel now claimed the right to cross-examine, and reply upon Cox's evidence; this was opposed by the counsel for Luck.

But the court, although it refused permission to cross-examine and address the jury, offered to put through the chairman such questions as Burditt's counsel suggested.

Luck and Burditt were both convicted. Being doubtful whether the court was right in its decision, I have reserved the case of Burditt for the consideration of the Court of Appeal.

The question is whether the court was right in refusing Burditt's counsel the right to cross-examine and reply on Cox's evidence for the defence. Bail was taken for Burditt's appearance at the next Epiphany Sessions.

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

W. H. Roberts for the prisoner *Burditt*.—This conviction was wrong; the court ought to have allowed the cross-examination and reply also. At Common Law a prisoner has a clear right to cross-examine every witness who gives evidence against him; the capacity to be examined draws with it the liability to be cross-examined; and as to the right of reply, the Prisoners Counsel Act entitles the prisoner's counsel to address the jury upon all the evidence adduced against his client. This being the prisoner's right, the offer made by the chairman to put questions for him is certainly by no means an equivalent. The case of *R. v. Woods and May* (6 Cox C. C. 224), is precisely in point. There two omnibus drivers were indicted for manslaughter; they were defended by separate counsel; the case for the prosecution concluded, Ballantine (for Woods), addressed the jury, but called no witnesses; Parry then addressed the jury for May, and called witnesses who threw the blame on the prisoner Woods. Ballantine then claimed the right of cross-examining, and afterwards of addressing the jury again. MR. COMMISSIONER GURNEY, after consulting Mr. Justice Cresswell and Mr. Justice Williams, said:—"Both the learned judges think as I do, that Mr. Ballantine should not only be allowed to cross-examine Mr. Parry's witnesses, but to address the jury." In the case of *Beale v. Moulds and others*, 1 Car. & K. 1, a point arose somewhat analogous. At the close of the plaintiff's case, the counsel for one of the defendants addressed the jury, and stated his intention to call a witness, with the view of showing that another person, who had been made a co-defendant in consequence of a plea in abatement, was liable to the plaintiff's demand. Thereupon the counsel for that co-defendant applied for permission to address the jury after that evidence had been given; and although that application was opposed, LORD DENMAN said:—"I think it is reasonable, and must be allowed."

Markham, in support of the conviction.—It is not disputed that there is at Common Law a right to cross-examine the witnesses called by the adverse party; but the cross-examination of Cox, in this particular case was not a matter *ex debito justitiæ*; it was within the discretion of the presiding judge to allow it or not. If it be a matter of favour, the court must look to see whether any injustice has been done; and having reference to the object of cross-examination, it is clear that no injustice has been done. In 2 Phillips & Arnold, on Evidence (10th edition), p. 458, it is laid down, that "the office of cross-examination is to search and to sift, to correct and supply omissions;" and there is no reason to suppose that that office would not be fulfilled by the cross-examination which did in fact take place: at all events, it lies upon the counsel for Burditt to show that the effect of putting questions suggested through the judge, was necessarily or probably prejudicial to the prisoner Burditt. Otherwise, the mode of conducting an examination, civil or criminal, is a matter in the discretion of the judge, where there is no positive rule of law to the contrary: (2 Taylor on Evidence, 928.) The case of *Woods v. May* is not

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the authoritative decision of a judge, and amounts to no more than this, that the court had a discretion either to allow or disallow the course suggested; and in the particular case thought that it "should be allowed"—not that it was a matter of right, and "must be allowed." The same observation applies to the other case cited of

Beale v. Moults and others.

MAULE, J.—Luck was allowed to call Cox as his witness; and why had not Burdett as much right to examine Cox as Luck had?

Markham.—He had of course a right to examine him as his own witness; but not to cross-examine him as a witness called by an adverse party.

MAULE, J.—He had at all events a right to put questions to him; and I do not know that it matters much whether it is called examination or cross-examination.

Markham.—The right of addressing the jury in reply is limited and defined by stat. 6 & 7 Will. 4, c. 114, s. 1, which enacts that, "from and after the 1st day of October, all persons tried for felonies shall be admitted after the case for the prosecution to make full answer and defence thereto by counsel learned in the law."

The word *thereto* must necessarily refer to the case for the prosecution. Now, on this occasion, the case for the prosecution was concluded; and the prisoner's counsel had replied "*thereto*," before Burditt's application was made.

PARKE, B.—The evidence of Cox criminating Burditt became, so far, evidence for the prosecution, and part of the case to which he had a right to reply.

Markham.—In the case of *Rex v. Krochl, Gibson, and Koech*, which is cited in 2 Spark N.P.C. 343; after the case for the prosecution had concluded, evidence was elicited by cross-examining a witness called on behalf of one defendant which had the effect of criminating another co-defendant; yet it does not appear that the counsel for the defendant so affected made any attempt to cross-examine the witness.

JERVIS, C.J.—In this case the prisoner should certainly have been allowed to cross-examine and reply, because the witness called by Burditt gave evidence to criminate him, and that evidence became tacked, as it were, to the case for the prosecution. We must not, however, be understood as deciding that when one prisoner calls a witness who does not criminate his fellow-prisoner, the latter would, in that case, have a right to cross-examine and reply. He might examine him as his own witness, but then he would have no right to reply.

PARKE, B. concurred.

MAULE, J.—I also concur in the decision of this case; but, at the present moment, I do not see my way so clearly upon the latter point adverted to by the Lord Chief Justice, as to be prepared to express my concurrence in that.

WIGHTMAN, J., PLATT, B., WILLIAMS and CROMPTON, JJ., concurred.

Conviction quashed.

OXFORD CIRCUIT.

STAFFORDSHIRE SPRING ASSIZES, 1854.

Stafford, March 14.

(Before Mr. JUSTICE WIGHTMAN.)

REG. v. MANN. (a)

Unlawful apprehension—Power of railway servants to compel persons to proceed on railway after non-production of ticket and non-payment of fare—Demand of fare.

Quære, whether, after the refusal of a passenger to produce his ticket or pay his fare, on alighting from a railway carriage, he can be compelled to proceed by train to the principal station on the line, to be there dealt with by the authorities of the company? Whether such a power exists or not, it is clear that the fare for such subsequent involuntary journey cannot be legally demanded.

THE prisoner was charged in the first count of the indictment with assaulting John Smith, with intent to prevent his lawful apprehension; in the second count, with an assault with intent to do grievous bodily harm; and in the third count, with intent to disable.

It appeared that the prisoner got into an empty third-class carriage, attached to a first and second-class train proceeding from Manchester to Stoke-upon-Trent. On reaching North-road station, he got out on the wrong side, and was accosted by the guard, who asked him for his ticket. The prisoner replied, "Ticket be d——d; I have no ticket;" and said he had intended to get out at the station for Crewe junction. No other demand was made on the prisoner; but the guard ordered him to get into a second-class carriage, and locked the doors. The train then proceeded to Stoke, a distance of several miles. The prisoner, on getting out, was asked for his ticket; and on his not producing it, the second-class fare from Manchester to Stoke was demanded. It not being paid, the policeman at the station collared the prisoner, who gave him a blow and got away. He was pursued and retaken, when the prisoner pulled out his knife and cut the policeman on the back of his hand.

The reason alleged for bringing the prisoner on to Stoke was that it was the head-quarters of the railway authorities, and there was no mode of dealing with the prisoner at North-road station.

WIGHTMAN, J., to the jury.—The prisoner gets into the train

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

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at Manchester; he gets out at North-road station, and his ticket is demanded, and not produced. On the contrary, the prisoner says he has not got it. The guard, instead of then taking him on the specific charge of going so far without his ticket, which perhaps he might have done, takes him in a second-class carriage to Stoke, several miles out of the way. A ticket from Manchester to Stoke is there demanded, and afterwards the full fare. It seems to me that this is clearly beyond the law, and that the railway authorities had no right to demand the fare from North-road to Stoke. I do not give any opinion as to the right to convey a person refusing to produce his ticket at one station on to another, on the charge of not paying his fare for that specific part of the journey which the prisoner had voluntarily and fraudulently performed; but whatever might have been the situation of the parties, if, on demand and refusal of the ticket or fare at North-road, the charge was there made, and he had been conveyed to Stoke for the purpose of dealing with it, here the arrest being for non-payment of the fare to Stoke, the apprehension was illegal, and the prisoner had a right to resist it. The only question is whether he did more than was reasonably necessary to effect his release from arrest. He does not appear to have had any other intent when he did the act charged, than to get away.

Verdict, guilty, on the ground that some excess of violence was used by the prisoner; and he was thereupon sentenced to a short term of imprisonment.

Scotland, for the prosecution.

Kenealey, for the prisoner.

OXFORD CIRCUIT.

STAFFORDSHIRE SPRING ASSIZES, 1854.

Stafford, March 16.

(Before MR. JUSTICE WIGHTMAN.)

REG. v. DOODY. (a)

Suicide—Misdemeanor.

An attempt to commit suicide is a misdemeanor at Common Law. The question for the jury is, whether the prisoner had a mind capable of contemplating the act charged, and whether he did, in fact, intend to take away his life. The mere fact of drunkenness in this, as in other cases, is no excuse for the crime; but it is a material fact for the jury to consider, before coming to the conclusion that the prisoner really intended to destroy his life.

THE prisoner was indicted for unlawfully attempting to commit suicide at Wolverhampton, on the 5th of March, 1854.

It appeared that the prisoner was at the George Inn, Wolverhampton, on the night of the 5th March, and about ten o'clock went to the water-closet. He was soon afterwards found there, suspended to a beam by a scarf tied round his neck. He was cut down and animation restored. On being taken into custody and charged with the offence, he stated that he had led a bad course of life, and had no money or friends. He now said in his defence that he had been drinking for nine days before, and did not know what he was doing. There was some evidence to show that, although he was partially intoxicated, he was quite capable of taking care of himself.

WIGHTMAN, J., told the jury that the offence charged constituted, beyond all doubt, a misdemeanor at Common Law. The question for them to consider was whether the prisoner had a mind capable of contemplating the act charged, and whether he did, in fact, intend to take away his life. The prisoner alleged in his defence that he was drunk at the time, which must be taken to mean that he had no deliberate intention to destroy his life; for the mere fact of drunkenness in this, as in other cases, is not of itself an excuse for the crime, but it is a material fact in order to arrive at the conclusion whether or no the prisoner really intended to destroy his life.

Verdict guilty. Sentence three months' imprisonment.

P. M'Mahon, for the prosecution.

The prisoner was not defended by counsel.

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

OXFORD CIRCUIT.

BERKSHIRE SUMMER ASSIZES, 1854.

Abingdon, July 11.

(Before MR. JUSTICE CROMPTON.)

REG. v. KIMBREY. (a)

*Arson—"House"—Statute 7 Will. 4 & 1 Vict. c. 89, s. 3.**In order to constitute the offence of setting fire to a "house" within the meaning of the statute 7 Will. 4 & 1 Vict. c. 89, the building must be shown to be a dwelling-house.**Where B. the tenant of a cottage during the continuance of the demise, left it, and removed his furniture for the purpose of the landlord doing some repairs in the cottage, and in that interval the cottage was set fire to:**Held, that it could not be described as the house of the landlord, but Semble, that it might be described either as the house, or "dwelling-house," of B. the tenant.*

THE first count of the indictment charged the prisoner, William Kimbrey, with feloniously, unlawfully and maliciously setting fire to a certain dwelling-house of John Whitehorne, at the parish of Drayton, on the 15th day of June, 1854, with intent to injure him, against the form of the statute. In a second count the building was described as the "house" of John Whitehorne. In a third count it was described as the dwelling-house of George Ball.

It appeared that the house in question was a cottage in which George Ball had resided down to the 10th of June, as tenant to Mr. John Whitehorne, who stated that he received the rent quarterly. It was sometimes deducted from the wages of Ball, who was employed as a labourer by Mr. Whitehorne. In order that some necessary repairs might be done to the cottage by the landlord, Ball left it on the 10th of June, and removed his furniture, and had not returned at the time of the trial, the repairs not having been completed. Mr. Whitehorne stated that he held Ball responsible for the rent during this period. The fire took place on the 15th of June, and at that time the doors were unlocked, and the roof partly removed.

At the close of the case for the prosecution:

Carington, for the prisoner, objected that he could not be convicted on this indictment. It was clear that the first count was not supported by the evidence. The house could not be considered

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law

as the dwelling-house of John Whitehorne, as he had never resided in it at all. With respect to the second count, it was not sufficient to prove that the house was a house merely, but it must be shown to be a dwelling-house. Though the third section of the statute 7 Will. 4 & 1 Vict. c. 89 (b) contains the words "any house," yet these words must be taken to mean not any house simply, but any dwelling-house, and the same construction must be put upon these words as on the word dwelling-house in the statute constituting the offence of burglary. A building constructed as a dwelling-house, but which had not been completed or inhabited, has been held not to be a house within the meaning of a former statute, not being a house in respect of which burglary could be committed. *Ellesmore v. St. Briavells*, 8 B. & C. 461. Moreover this could not in any construction of the statute be considered as the house of John Whitehorne, because it was let to a tenant, and the landlord had only a reversionary interest in it. With regard to the third count, it could not be considered as the dwelling-house of George Ball at the time of the fire. He was not residing in it, nor was he in possession of it. The statute clearly contemplated that the house should be in the actual possession of some person.

After hearing *Skinner* for the prosecution,

CROMPTON, J., expressed his opinion that neither the first or second counts were proved, the house having been demised to Ball. With regard to the other question, he was of opinion that a "house" within the statute meant a "dwelling-house," but in this case he thought the evidence proved it to be the dwelling-house of George Ball, and therefore the third count was supported. He should direct the second count to be amended by substituting the name of Ball for Whitehorne, and in the event of a conviction would reserve the points whether there was any evidence to support the second count as amended, or the third count.

Carrington then addressed the jury on the other facts of the case.

CROMPTON, J., in summing up directed the jury, if they thought the other facts brought the charge home to the prisoner, to further consider whether the house was the house of George Ball, and whether at the time of the fire his absence was merely temporary, he having at the time he left, an intention to return.

The jury acquitted the prisoner.

(b) "Whoever shall unlawfully and maliciously set fire to any church or chapel, or to any chapel for the religious worship of persons dissenting from the united Church of England and Ireland, or shall unlawfully and maliciously set fire to any house, stable, coach-house, out-house, warehouse, office, shop, mill, malt-house, hop-oast, barn or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them respectively shall then be in the possession of the offender, or in the possession of any other person, with intent thereby to injure or defraud any person, shall be guilty of felony," &c.

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OXFORD CIRCUIT.

Abingdon, July 11, 1854.

(Before MR. JUSTICE CROMPTON.)

REG. v. OMANT.(a)

Evidence—Deposition—stat. 11 & 12 Vict. c. 42, s. 17—Illness—Pregnancy.

The deposition of a witness who is so far advanced in pregnancy as to make her unfit to travel to the assize town, cannot be read in evidence under the 11 & 12 Vict. c. 42, s. 17, which makes the deposition admissible if it be proved that the person whose deposition shall have been taken, "is so ill as not to be able to travel."

THE prisoner was indicted for bigamy. A woman named Anne Hazle was examined before the magistrates, and proved the first marriage of the prisoner, and it was now sought to read her deposition on that occasion as evidence under the statute 11 & 12 Vict. c. 42, s. 17. (b) For this purpose Mr. Thomas Burton, a surgeon, was called. He stated that he had been requested to see Anne Hazle for the purpose of ascertaining her fitness to travel to the assizes, and had accordingly visited her on Saturday the 8th and Sunday the 9th of July, and found her very far advanced in pregnancy and only about a month from the time for her delivery, and not in a fit state to come to Abingdon. There was no illness or anything the matter independently of her pregnancy, but that rendered it unsafe for her to travel.

Hunt, for the prisoner, objected to the reception of the deposition.

CROMPTON, J.—I cannot receive the deposition as evidence. The deponent is not ill, and I have already held, whether rightly or wrongly, that mere apprehension of ill consequences is not sufficient. I am not very positive on the point, because I believe a different opinion has been entertained, but I shall adhere to my

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

(b) The statute, after directing the mode of taking the deposition of witnesses before justices, enacts (sect. 17) "that if upon the trial of the person so accused as first aforesaid, it shall be proved by the oath or affirmation of any credible witness, that any person whose deposition shall have been taken as aforesaid, is dead, or so ill as not to be able to travel, and if also it be proved that such deposition was taken in the presence of the person so accused, and that he or his counsel or attorney had a full opportunity of cross-examining the witness; then, if such deposition purport to be signed by the justice by or before whom the same purports to have been taken, it shall be lawful to read such deposition as evidence in such prosecution, without further proof thereof, unless it shall be proved that such deposition was not in fact signed by the justice purporting to sign the same."

former opinion, as evidence of this kind ought not to be admitted lightly.

As the case for the prosecution could not be made out independently of this testimony, the prisoner was acquitted.

Verdict, Not guilty.

J. J. Williams for the prosecution.

Hunt for the prisoner.

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OXFORD CIRCUIT.

HEREFORDSHIRE SUMMER ASSIZES, 1853.

Hereford, July 29.

(Before MR. JUSTICE COLERIDGE.)

REG. v. JONES.(a)

False pretences—Existing fact—Question of bonâ fide intent to perform agreement.

Although to constitute the statutable offence of obtaining money by means of false pretences, the pretence must be false at the time ; Semble, it need not necessarily be of some alleged existing fact capable of being disproved by positive testimony, but may depend on the bonâ fide intention and willingness of the defendant at the time of entering into a contract to perform it, or to do some act at a future period.

THE prisoner was indicted for obtaining money by false pretences.

The first count alleged that John Jones, the defendant, unlawfully, knowingly and designedly did falsely pretend to one David Absolom Owen, that he the said John Jones, had a letter of recommendation from a Rev. Mr. Greenfield of Kidderminster, and that he the said John Jones, had engaged to make complete for one Mrs. Price and her niece nine new teeth for the sum of seven pounds, and that she, the said Mrs. Price, refused to advance any money to him until the teeth were completed, and that he wanted thirty shillings to enable him to complete the said teeth ; by means of which said false pretences the said John Jones did then and

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

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there unlawfully obtain from the said David Absolom Owen thirty shillings of the moneys of the said David Absolom Owen, with intent then and there to cheat and defraud him of the same: whereas in truth and in fact, he the said John Jones at the time of making such false pretences had not a letter of recommendation from a Reverend Mr. Greenfield of Kidderminster, and he the said John Jones had not agreed to make complete for one Mrs. Price and her niece nine teeth for the sum of seven pounds, and the said Mrs. Price had not refused to advance any money to him until the said nine teeth or any teeth were completed, and he did not want thirty shillings or any other sum to enable him to complete the said teeth or any teeth for the said Mrs. Price; to the great damage, &c.

The second count was for falsely pretending to one James Bridgwater that he the said John Jones was a dentist, and that he intended and was willing to make a gold palate for the said James Bridgwater for the sum of two pounds, if he the said John Jones then and there, before making the said gold palate, should receive from the said James Bridgwater the sum of thirteen shillings in cash down, and a certain false palate of the said James Bridgwater, to be valued or allowed for at the sum of seven shillings; by means of which said false pretences the said John Jones did then and there unlawfully obtain thirteen shillings in silver of the moneys of the said James Bridgwater, and the said false palate of the value of seven shillings of the property of the said James Bridgwater, with intent to cheat and defraud him of the same. The count then negatived that the defendant intended or was willing to make the gold palate.

The third count was for falsely obtaining thirty shillings from Elizabeth Price and her niece, that he the said John Jones was willing and intended to make nine new teeth for her at the price of five shillings for each tooth, on receiving, before making the said teeth, part of the said sum in cash down.

A fourth count was for obtaining certain false teeth from Mary Hamlin, falsely pretending to her that he the said John Jones "was willing to repair certain false teeth of the said Mary Hamlin, and intended to have the same repaired for her in a day or two."

It appeared that the defendant came to the town of Bromyard, and on the 29th of June called on Mr. Owen, a dissenting minister, and stated that he was a dentist in search of employment. He produced a letter of recommendation, purporting to be written by Mr. Greenfield, a dissenting minister at Kidderminster. Mr. Owen gave him a letter to a Mrs. Price, and on the 1st of July the defendant called on Mr. Owen, and stated that Mrs. Price had given him a job of seven pounds, but that he could not accomplish it without some money to buy gold, and Mrs. Price would not advance a single farthing until the job was done; and he therefore asked Mr. Owen to lend him thirty shillings. Mr. Owen, not having change, advanced him two pounds. The defendant said he was to complete the job on the following Saturday. Mr. Owen

met him on that day, when the defendant said his wife had gone to Worcester for the gold. Mrs. Price subsequently communicated with Mr. Owen, and the latter, in consequence, saw the defendant, and charged him with having told a falsehood in saying that he had not received any money from Mrs. Price. He still persisted that he had not had any from her. Mrs. Price now stated that in consequence of Mr. Owen's letter she had agreed with the defendant on the 10th to make nine teeth, at 5s. each, six for herself, and three for a niece. He asked for money on account, stating that was his general practice, but mentioned no sum. Mrs. Price advanced him thirty shillings. He agreed to come on the following Saturday at noon to fix the teeth, but did not. The witness met him the same evening, when the defendant made an excuse that he had to change his lodgings, and promised to come on the following Monday morning, but he did not do so, and he was not seen again at Bromyard.

James Bridgwater stated that the defendant called on him, on the 30th of June, and subsequently agreed to make him a new palate for 2l., 1l., of which was to be paid down. The witness gave him 13s. in cash, and the old palate, for which the defendant agreed to allow 7s. The remaining 1l. was to be paid in a month after the palate was made. The defendant did not make it; and made an excuse that he had sent his wife to Worcester for gold, and she had made a mistake, and he must go himself.

The defendant was taken into custody on the 25th of July at a lodging-house at Leominster, twelve miles from Bromyard. He left his lodgings at the latter town that morning, telling his landlady he was going out fishing.

The fourth count was abandoned, the evidence failing to establish legal offence.

COLERIDGE, J., in summing up, told the jury that, in order to constitute the offence charged, the alleged false statement must be false at the time it was made. There were two cases.—The first had reference to Mrs. Price, but involved the obtaining money from Mr. Owen. If the jury believed the witnesses, it was clearly established that the defendant made a false assertion as to not having received any money from Mrs. Price. The second case of James Bridgwater was more doubtful. The defendant, appearing to be a dentist, agreed to make a palate for 2l., receiving 13s. of it in cash, and the old palate in lieu of 7s. If that had been a *bonâ fide* agreement, although not performed, the defendant could not be indicted for the breach of it. But the supposition put forward on the part of the prosecution is, that the defendant never intended to make the new palate at all. That was a question for the jury to determine, but the case was certainly more doubtful than the first.

The jury returned a general verdict of guilty.

W. H. Cooke and P. M'Mahon for the prosecution.

The defendant was not defended by counsel.

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OXFORD CIRCUIT.

GLOUCESTERSHIRE SUMMER ASSIZES, 1853.

Gloucester, August 4.

(Before MR. JUSTICE CROMPTON.)

REG. v. VAILE. (a)

Personation of voter—Evidence—Production of writ.

On an indictment for fraudulently personating a voter at an election of a member of Parliament for a city being a county of itself, the writ to the sheriff must be produced in order to prove that the election was duly made.

JAMES VAILE, the younger, was indicted for fraudulently personating a voter at an election of a member of Parliament for the City of Gloucester, held on the 5th of January, 1853.

The indictment was in the following form:—

CITY of GLOUCESTER and County } The jurors for our
of the same City, to wit. } Lady the Queen
upon their oath present, that heretofore, to wit, on the twenty-ninth day of December, in the year of our Lord one thousand eight hundred and fifty-two, a certain writ of our said Lady the now Queen, issued out of Her Court of Chancery at Westminster, in the County of Middlesex, directed to the then sheriff of the City of Gloucester aforesaid, reciting that Rear-Admiral Maurice Frederick Fitzhardinge Berkley had been lately chosen one of the citizens for the said city for the then Parliament of our said Lady the Queen, summoned to be holden at the City of Westminster, the twentieth day of August, in the year aforesaid, and from thence, by several writs of our said Lady the Queen, prorogued to and until the fourth day of November then last passed and there then holden; and that the said Maurice Frederick Fitzhardinge Berkley, being so chosen one of the citizens for the said city as aforesaid, had since accepted the office of one of the Commissioners for executing the office of Lord High Admiral of Great Britain and Ireland, by means whereof the subjects of our said Lady the Queen of the said city were deprived of her citizen to treat for the benefit of the same city in Her Parliament; our said Lady the Queen being unwilling that the commonalty of her kingdom in the

(a) Reported by J. E. DAVIS, Esq., Barrister-at-Law.

said Parliament assembled to treat of business concerning our said Lady the Queen, the state and defence of her kingdom and the church, from the aforesaid cause should be diminished or lessened whereby those affairs might not have a due end, commanded the then sheriff of the said city, that in the place of the said Maurice Frederick Fitzhardinge Berkley, one other fit and discreet citizen of the aforesaid city, proclamation being first made of the premises and of the day and place freely and indifferently by those who should be present at the proclamation, according to the form of the statute in that case made and provided, the then sheriff should cause to be elected, and the name of such citizen to be inserted in certain indentures to be thereupon made between the then sheriff and them who should be present at such election, whether at the said election he should be present or absent, and to cause him to come to the said Parliament, so that the same citizen so to be chosen might have full power and sufficient authority for himself and the commonalty of the aforesaid city, to do and consent to those things which, in the Parliament aforesaid, by the common council of the realm of our said Lady the Queen (by the blessing of God), should happen to be ordained upon the aforesaid affairs, our said Lady the Queen willing nevertheless, that neither the then sheriff nor any other sheriff of the said kingdom in anywise should be elected in the election so made distinctly and openly under the seal of our said Lady the Queen, and the seals of them who should be present at such election, should certify to our said Lady the Queen in her Chancery, forthwith remitting to our said Lady the Queen her part of the aforesaid indentures annexed to the said writ, together with the said writ, which said writ afterwards, to wit, on the day and year first aforesaid, at the said city of Gloucester, was delivered to one Joseph Carter, Esquire, then sheriff of the said city of Gloucester, to be executed in due form of law.

And the jurors aforesaid, upon their oath aforesaid, do further present, that proclamation having been duly made by the said sheriff, by virtue and in pursuance of the said writ, of the premises and of the day and place as therein commanded, to wit, the fourth day of January, in the year of our Lord one thousand eight hundred and fifty-three, and at the Shire Hall, in the city of Gloucester aforesaid, the electors of citizens to serve in Parliament for the said city, being in that behalf duly forewarned, afterwards, to wit, on the said fourth day of January, in the year last aforesaid, in full county at a special County Court then holden at the said Shire Hall, in the said city of Gloucester, and in and for the said city and county of the said city, were duly assembled to elect a citizen of the said city to serve in the said Parliament, according to the exigency of the writ aforesaid, and during that assembly to that intention, and before such citizen, by virtue of the writ aforesaid or otherwise, was elected, to wit, on the day and year last aforesaid, James Vaile, the younger, then and there appeared as a voter at the time of polling at the said election, and then and there tendered his vote as such voter, and did then and there unlawfully

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and knowingly personate and falsely assume to vote in the name of a certain other person, that is to say, one James Vaile, who then was James Vaile the elder, and which last mentioned James Vaile then appeared, and was on the register of voters which was then and there in force for the said city; and the said James Vaile, the younger, then and there as and in the name of James Vaile, did give his vote for the said Maurice Frederick Fitzhardinge Berkley, who was then a candidate at the said election; whereas in truth and in fact, the said James Vaile, the younger, was not the person whose name so appeared and was on the register of voters as aforesaid as James Vaile, as he the said James Vaile, the younger, at the time of his so personating and assuming to vote, and voting in the name of James Vaile as aforesaid, well knew; and whereas in truth and in fact the said James Vaile, the younger, was not named, nor did he in any way appear on the register of voters as aforesaid, as he the said James Vaile, the younger, at the time of his so personating and assuming to vote, and voting in the name of James Vaile as aforesaid, well knew. And whereas in truth and in fact the said James Vaile, the younger, had then and there no right whatever to give his vote at the said election, as he the said James Vaile, the younger, at the time of his so personating and assuming to vote, and voting in the name of James Vaile, as aforesaid, well knew; against the form of the statute in such case made and provided.

Second Count. — And the jurors aforesaid, upon their oath aforesaid, do further present that heretofore, to wit, on the fourth day of January, in the year of our Lord one thousand eight hundred and fifty-three, at the election aforesaid, for the city aforesaid, the said James Vaile, the younger, then and there appeared as a voter at the time of polling at the said election, and then and there tendered his vote as such voter; and that Albert Pleydell Carter, then and there duly appointed deputy returning officer by and for the said Joseph Carter, Esquire (which said Joseph Carter was then and there the returning officer at the said election for the said city), did then and there at the time of the said James Vaile the younger, so tendering his vote (the said Albert Pleydell Carter so appointed deputy for such returning officer as aforesaid, having competent power and authority so to do), put to the said James Vaile, the younger (he the said Albert Pleydell Carter being thereunto then and there required on behalf of Henry Thomas Hope, Esquire, who was then and there a candidate at the said election), the following question, that is to say, "Are you the same person whose name appears as James Vaile on the register of voters now in force for the city of Gloucester?" (meaning the said city of Gloucester), to which question the said James Vaile, the younger, then and there unlawfully and wilfully did falsely answer "Yes." Whereas in truth and in fact, the said James Vaile the younger, was not the same person whose name then, at the time of the said question and answer, appeared as James Vaile on the register of voters then in force for the said city of Gloucester, as

he the said James Vaile, the younger, at the time of his so answering as aforesaid, well knew; against the form of the statute in such case made and provided.

Third Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that heretofore, to wit, on the fourth day of January, in the year of our Lord one thousand eight hundred and fifty-three, at a certain election of a member to serve in Parliament for the city of Gloucester, the said James Vaile, the younger, did unlawfully and knowingly personate and falsely assume to vote in the name of a certain other person, that is to say, one James Vaile, who then was James Vaile the elder, and the name of which last-mentioned James Vaile then and there appeared on the register of voters then in force for the said city; against the form of the statute in that case made and provided.

Fourth Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that heretofore, to wit, on the day and year last aforesaid at the election last aforesaid, the said James Vaile, the younger, then and there appeared as a voter at the time of polling at the said election, and then and there tendered his vote as such voter, and that the said Albert Pleydell Carter, then and there duly appointed deputy returning officer, by and for the said Joseph Carter, Esquire (which said Joseph Carter was then and there the returning officer at the said election for the said city), did then and there at the time of the said James Vaile, the younger, so tendering his vote (the said Albert Pleydell Carter, so appointed deputy for the returning officer as aforesaid, having competent power and authority so to do), put to the said James Vaile, the younger (he the said Albert Pleydell Carter, being thereunto then and there required on behalf of Henry Thomas Hope, Esquire, who was then and there a candidate at the said election), the following question, that is to say, "Are you the same person whose name appears as James Vaile on the register of voters now in force for the city of Gloucester?" (meaning the said city of Gloucester), to which question the said James Vaile, the younger, then and there unlawfully and wilfully did falsely answer, "Yes," whereas in truth and in fact the said James Vaile, the younger, was not the same person whose name then at the time of the said question and answer appeared as James Vaile on the register of voters then in force for the said city of Gloucester, as he the said James Vaile, the younger, at the time of his so answering as aforesaid, well knew; against the form of the statute in such case made and provided."

Skinner, for the prosecution, opened the case to the jury.—On the 5th January of the present year there was an election for a member of Parliament for this city; a person bearing the same name as the prisoner, and who was duly entitled as a freeman to vote, recorded his vote on that occasion. In the course of the day the prisoner, accompanied by a number of voters, came to record his vote. He was challenged in the usual way by the polling clerk, and told he had no vote; he, however, still persisted

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in giving his vote, and the usual question in such cases was put to him as to whether he was the same person whose name was on the register, and he replied in the affirmative, and his vote was recorded, and the offence completed.

Mr. Joseph Carter was then called.—He proved that he was sheriff of the city of Gloucester, and had held that office in January last. On the 5th of that month he remembered holding an election for a member to serve in Parliament as representative of the city.

Powell, J. J. for the defendant, objected that as the indictment alleged that the election had been duly held, the only legal evidence of the fact was the writ to the sheriff.

CROMPTON, J.—You must produce it, or an examined copy.

Skinner said he was unable to do so; but submitted that as the sheriff was acting in the discharge of his duty, the production of the writ was not necessary. It must be assumed that the election was legally held.

CROMPTON, J. ultimately decided that the case could not go on without it.

The defendant was accordingly acquitted.

Ireland.

DUBLIN COMMISSION COURT, GREEN STREET.

December 7, 1852.

(Before CRAMPTON, J., and GREENE, B.)

REG. v. MICHAEL BYRNE. (a)

*Uttering counterfeit coin—"Resembling or intended to resemble"—
2 Will. 4, c. 34, s. 7.*

On an indictment under the 2 Will. 4, c. 34, s. 7, for uttering, &c. a piece of false and counterfeit coin, apparently intended to resemble and pass for a piece of the Queen's good and legal current coin, it is a question for the jury whether the coin produced supports the indictment, and if they should be of opinion that the coin was not intended by the maker to pass as a good coin, they should acquit.

THE prisoner was indicted for uttering and putting off a counterfeit coin, knowing it to be false. The second count charged him with having, at the same time, in his possession two other pieces of false coin.

From the evidence for the prosecution, it appeared that on the 9th of November preceding the prisoner went into the shop of a Mrs. Tobin, at Rathfarnham, on the road to Roundwood, for the purpose of getting some refreshment. That being told by the shopboy at the lower counter of the shop that he had to pay 5*d.*, the prisoner asked for change, and handed the boy the coin in question. The shopboy handed the coin to his mistress, who went and weighed it. The prisoner remained in the lower part of the shop the entire time. After weighing it, Mrs. Tobin came down to the place where Byrne was and asked him what he called it. He said he did not know what to call it; but that he had got it at the fair of Roundwood on that day, with 10*s.* in silver, as change for a pound note. The constable who arrested him shortly after on the same day, found 23*s.* 6*d.* in good silver on his person; and hearing something drop on the flags while searching him, picked it up, and found wrapped in a piece of paper two similar coins to that which he had tendered. (The coin being produced.)

J. A. Curran, for the prisoner, objected to proceeding with the trial, as the coin produced did not support the indictment. The coin was, in reality, a Prince of Wales's medal, and, though on one

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side it bore some resemblance to a good half-sovereign, having Her Majesty's head and the usual inscription, on the obverse was the plume of the Prince of Wales, with this inscription, "Prince of Wales's model half-sovereign." The prisoner is indicted under the 2 Will. 4, c. 34, s. 7, which enacts, "*That if any person shall tender, utter or put off any false or counterfeit coin resembling, or apparently intended to resemble or pass for any of the King's current gold or silver coin, knowing the same to be false or counterfeit, every such offender shall in England and Ireland be guilty of a misdemeanor,*" &c. In *R. v. Harris* (1 Leach, 165), the prisoners were taken in the act of coining shillings, which were, however, in an incomplete state, it being requisite that they should be immersed in aquafortis before they were finished, and the judges then held that the offence was not completed.

Smyly, Q.C.—It need not be a close resemblance, and under any circumstances this must be a question for the jury.

Per Curiam.—It is plain that it is a question for the jury, as to whether or not this resembles or was intended to resemble the current coin of the realm.

CRAMPTON, J., in charging the jury, after stating the indictment: The first question is, whether or not the coin produced, if I may call it by a name to which it is not entitled, is a counterfeit coin resembling or intended to resemble the half-sovereign, the current coin of the realm? If so, secondly, whether or not the prisoner knew it to be counterfeit? You will take this counterfeit and examine it, and if you consider that it was merely intended as a medal, a card-marker, or a plaything, you must acquit the prisoner. If, however, you think it was intended to resemble a half-sovereign, you will then consider the second question which I have put to you. Now, this base metal coin which is produced has, on one side, the representation of Her Majesty, as usual on half-sovereigns, with the words, Victoria Queen of Great Britain and Ireland, &c. So far, I think, it would correspond with a base coin intended to represent the good coin of the realm, as it is not necessary that the counterfeit should be an exact resemblance of that which it is intended to represent. The law is, as laid down by Hale: "If there be a lawful coin of this kingdom, and A. doth counterfeit it in a considerable measure, but yet with some small variation in the inscription, effigies, or arms, to the intent thereby to evade the statute, yet this is counterfeiting of the king's money, and that doth unquestionably appear if he vent it as true."

On this side, therefore, it comes within the definition of a counterfeit coin. The obverse, however, gives the arms of the Prince of Wales, and bears this inscription, "The Prince of Wales's model half-sovereign." Now, every one knows the Prince of Wales has no coin, and there is here then a very considerable variation from the current good half-sovereign. The true test, however, is, was this base metal coin (or however I should call it) intended by the maker to pass as a counterfeit coin, or was it merely designed for a plaything, a card-marker, &c.?

A juror here remarked that he had in his possession several similar coins or medals, and that he had seen such passed about as mere playthings.

CRAMPTON, J.—You are perfectly correct in mentioning this. Now, I will point out your duty more clearly to you in this case by an illustration. We have all seen bank notes purporting to be drawn on the Bank of Elegance, &c. One of these notes could not be the subject of an indictment such as the present. The passing of it, as a genuine bank note, would be a fraud and punishable; but not under an indictment similar to the present. (His Lordship then proceeded to comment on the evidence as to the guilty knowledge of the prisoner, and having concluded his charge, in answer to the question of a juror, said), If you believe that it was not intended by the maker to pass as a coin resembling the current coin of the realm, you should acquit.

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MICHAEL
BYRNE.

1852.

Uttering base
coin.

Verdict, Not guilty.

Honourable J. Plunket, Q.C., and Smyly, Q.C., for Crown.
J. A. Curran, for the prisoner.

Ireland.

HOME CIRCUIT.

SPRING ASSIZES.—MULLINGAR.

March 3, 1854.

(Before MONAHAN, C. J.)

REG. v. HUGH LUNNY. (a)

Evidence—Res gestæ—Murder—Statement of deceased.

Statements made by the deceased to the first person who comes up after he has been wounded, are admissible as part of the res gestæ.

The deceased had died from the effects of a wound on his head, inflicted by a stick. A girl in the neighbourhood had heard a cry, and coming out had found the deceased standing with his cap in his hand, and apparently weak and injured. The deceased did not survive more than a few hours.

Held, the statement made by the deceased to the witness immediately on her coming up, complaining of the injury, was admissible in evidence, being part of the res gestæ.

IN this case the prisoner was indicted for the wilful murder of Thomas Cooney, on the 15th of June, 1852.

(a) Reported by P. J. M'KENNA, Esq., Barrister-at-Law.

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v.
HUGH LUNNEY.
—
1854.
—
Evidence.

From the evidence for the Crown it appeared that on the day in question the prisoner was the last man who was seen in company with the deceased, who was in the habit of taking money from a branch establishment of his master's at Oldcastle to Rockbrook. The prisoner had been on a visit with his brother at Oldcastle previously, and had generally announced his intention of returning to England on the day before the murder, but did not in fact do so. That on the day in question he had been seen lounging about the road by which Cooney was to pass, that he was last seen in company with Cooney a short distance from the place in which the murder was committed. That the prisoner on the evening of that day was found crossing the country by a by-path entirely out of the direction in which he said he was going, to Castle-Pollard.

Elizabeth Farnan examined.—I recollect the evening in question. I was in my own house at Ballymanus. I heard a shout which attracted my attention. Our house is up from the roadway. When I went out I saw deceased, he was standing on the road at our gate, he had a stick in one hand, and his cap in the other. He seemed very weak and injured. I brought him into the house, and after a short time a car was got, and he was taken to Mr. Booker's. (The witness was here asked if deceased said anything.)

Osborne (for the prisoner) objected that it could only be as a dying declaration that what the prisoner said to the witness could be evidence, and they had not shown that at this time the deceased knew he was dying.

To the Court.—The moment I came up to him he spoke to me.

His Lordship ruled that what the deceased then said was evidence as part of the *res gestæ*.

Examination continued.—I asked him what was the matter with him. He said he was robbed by the man who walked with him from the cross-roads.

The prisoner was convicted.

Counsel for the Crown, *Berwick*, Q. C., *Battersby*, Q. C., and *Griffith*.

For the prisoner, *R. Osborne*.

Ireland.

HOME CIRCUIT.

SPRING ASSIZES.—MULLINGAR.

March 4, 1854.

(Before MONAHAN, C. J.)

REG. v. M'DERMOTT. (a)

Evidence—Murder—Statements before magistrate—Duties of magistrates—12 & 13 Vict. c. 69, s. 18 (Irish)—11 & 12 Vict. c. 42, s. 18 (English.)

It is the duty of the magistrate to take down in writing statements made before him by a prisoner, and even though it should be shown affirmatively that the statements were not reduced to writing, evidence cannot be given of what was said by the prisoner on the occasion.

Semble, the admission of such evidence might defeat the intention of the 12 & 13 Vict. c. 69, s. 18 (Irish), and 11 & 12 Vict. c. 42, s. 18 (English), to compel magistrates to reduce to writing the statements of accused parties, and hence the only evidence that can be given of what was stated by the prisoner to the magistrate is the deposition directed to be taken by the above acts.

IN this case the prisoner was indicted for the wilful murder of Thomas Kelly.

From the evidence, chiefly of an approver, it appeared that the prisoner had, on the night in question, gone with several men for the purpose of beating the deceased. From the injuries which he received the deceased died almost immediately after he had been beaten. At the time of the transaction the authorities were able to get no evidence as to the parties by whom the offence was committed. Several persons who were suspected were brought before the magistrates and examined at the time, amongst others the prisoner. The Crown proposed to give in evidence what was then stated before the magistrates, after it was proved that the prisoner had been duly cautioned. The magistrate stated that he did not recollect anything about what took place, on account of the lapse of time and the number of persons brought before him. The constable, however, who had taken the prisoner before the magistrate at the time, swore that the prisoner was duly cautioned; that the magistrate did not take down in writing the prisoner's statement. He was able to give an account of what the prisoner said.

Montgomery (with whom *L. Fox*), for the prisoner, contended

(a) Reported by P. J. M'KENNA, Esq., Barrister-at-Law.

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v.
M'DERMOTT.

1854.

Evidence—
Confession.

that this could not be evidence, as it would defeat the intention of the Legislature, which clearly was to prevent parol evidence being given of statements made before a magistrate by parties. The words of the act (12 & 13 Vict. c. 69, s. 18) are, that "after the examination of all the witnesses on the part of the prosecution as aforesaid shall have been completed, the justice of the peace, or one of the justices by or before whom such examination shall have been so completed as aforesaid, shall, without requiring an attendance of the witnesses, read or cause to be read to the accused the depositions taken against him, and shall say to him these words or words to the like effect—'Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial;' and whatever the prisoner shall then say in answer thereto shall be taken down in writing and read over to him, and shall be signed by the said justice or justices, and kept with the depositions of the witnesses, and shall be transmitted with them as hereinafter mentioned; and afterwards upon the trial of the said accused person the same may, if necessary, be given in evidence against him, without further proof thereof (if the same purport to be signed by the justice or justices by or before whom the same purports to have been taken), unless it shall be proved that the justice or justices purporting to sign the same, did not in fact sign the same." If it is held that the statements made before the magistrate may be given in evidence, then the intention of the Legislature will be utterly defeated by the magistrate's neglecting or declining to do his duty.

Berwick, Q.C. (with him *Battersby, Q.C.*, and *Griffith.*)—The last part of the section leaves the law on this subject as it was, "provided nevertheless that nothing herein enacted or contained shall prevent the prosecutor in any case from giving in evidence any admission or confession or other statement of the person accused or charged, made at any time which by law would be admissible as evidence against such person." This leaves the law on the subject as it was; and therefore, as we are not here attempting to give secondary evidence of a statement reduced to writing, we are entitled to its admission. There is no doubt that previous to this act we might give parol evidence of what the accused stated to the magistrate, if we had shown that it had not been reduced to writing.

MONAHAN, C. J.—Then the magistrate is to be at liberty to take it down or not, as he pleases. I think it was to prevent this that the act was passed. If the statement were made to the policeman while going to the justices, and the prisoner was duly cautioned, I would admit it. I cannot admit this evidence.

Without hearing counsel for the prisoners, the jury returned a verdict of

Not guilty.

[The English and Irish Acts are *verbatim* the same, with the addition of the words between brackets in the Irish Act.—REPORTER.]

Ireland.

DUBLIN COMMISSION COURT, GREEN STREET.

April 11, 1854.

(Before BALL and JACKSON, JJ.)

REG. v. CRAWFORD AND SMITH. (a)

Practice—Compelling attendance of witness—Collusive absence of.

The court will not issue a bench warrant to bring up a witness, although it is sworn that he is keeping out of the way collusively, and that his evidence is so material to the prosecution that the case cannot go on without him, but will postpone the trial to allow the witness's recognizance to be estreated on his non-appearance when called.

J. A. CURRAN, for the prosecution, applied for a bench warrant to bring up George Murphy, a witness who was keeping out of the way in collusion with the traversers.

BALL, J.—I never heard of such a process being used for the purpose you seek it. You must secure the attendance of the witness according to due course of law.

J. A. Curran.—We have a very strong case. The affidavit on which I move states that George Murphy is a most important witness, that defendant believes he is collusively keeping out of the way, that he has left his usual residence that the ends of justice may be defeated by his absence, as he is a material and necessary witness for the prosecution. We also have it sworn that the witness is a porter, and would be quite careless about having his recognizance estreated, as he has no means. If the trial now goes on, we have no redress.

BALL, J.—You may have a meritorious case, but we must act according to law.

Curran then applied that, under the circumstances, the trial might be postponed, and the witness's recognizance estreated, and he might then be got into custody by the next commission.

BALL, J.—Does the counsel for the prisoners object to a postponement?

Sidney said he would leave the matter with the court.

Per curiam.—The prisoner's counsel not objecting, let the trial be postponed to next commission, and let the witness's recognizance be estreated on his not appearing when called.

(a) Reported by P. J. M'KENNA, Esq., Barrister-at-Law.

Ireland.

COURT OF QUEEN'S BENCH.

May 8, 1854.

(Before CRAMPTON, J.)

REG. v. LEVY. (a)

11 & 12 Vict. c. 78, s. 5—*Proceedings under by Crown—Writ of error to quash erroneous sentence.*

Where an erroneous sentence has been pronounced and recorded by Court of Quarter Sessions, the Crown may proceed under the 5th section of the 11 & 12 Vict. c. 78, to assign error on the record and have the sentence quashed, in order that the proper sentence may be passed upon the prisoner.

The prisoner was sentenced to two years' penal servitude, the court having no jurisdiction to pass sentence for less than four years. The Crown having assigned error on the case coming before the court, the prisoner being unable to retain counsel or attorney from want of means, the court proceeded to pronounce judgment on the writ of error without assigning counsel, and having quashed the judgment of the court below, remitted the prisoner to the court below to receive the proper sentence.

IN this case the prisoners were brought up under a writ of *habeas corpus* for the purpose of joining in error. The object of bringing the writ by the Crown was for the purpose of having the judgment of the Court of Quarter Sessions, sentencing the prisoner to two years' penal servitude, reversed, and having the proper sentence passed under the 5th section of 11 & 12 Vict. c. 78.

Corballis, Q. C., for the Crown, stated the above facts, and that the Assistant Barrister had not jurisdiction to sentence to less than four years' penal servitude. When this court should reverse the judgment, they might either pronounce the proper sentence or remit the case to the court below for that purpose.

CRAMPTON, J., asked if the prisoner had counsel or attorney appearing for him, and, on receiving an answer in the negative, said he thought it would be better not to ask the prisoner to con-

(a) Reported by P. J. M'KENNA, Esq., Barrister-at-Law.

sent to join in error, but to put him under the usual four-day rule to join in error. The prisoner was then sent to Richmond Bridewell for the purpose of being more conveniently brought up when required.

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v.
LEVY
1854.

*Practice—Writ
of error.*

May 9.

(Before the FULL COURT.)

The prisoner was again brought up to-day, and stated, in reply to the court, that he had no means to retain counsel or attorney.

The *Attorney-General* said that, as this was the first case under that act, he would, if the court thought fit, undertake for the Crown that, if counsel and attorney should be assigned, they should be paid.

After considerable consultation amongst the members of the court,

LEFROY, C. J.—What we are about doing cannot prejudice and may be favourable to the prisoner, as we quash the judgment which has been pronounced against him, and will send him back to be dealt with by the Court of Quarter Sessions, where he may have counsel assigned to him and take advantage of any error in the course taken by the Crown.

Judgment reversed.

The *Attorney-General* and *Corballis*, Q. C., for the Crown.

[The 11 & 12 Vict. c. 78, s. 5, enacts, that whenever any writ of error shall be brought upon any judgment, or any indictment, information, presentment or inquisition, in any criminal case, and that the Court of Error shall reverse such judgment, it shall be competent for such court of Error either to pronounce the proper judgment, or to remit the record to the court below in order that such court may pronounce the proper judgment upon such indictment, information, presentment or inquisition.

Although there was no question as to the power of the court under this act, as it is the first case on which the court have acted under this section, it seems deserving of note.—REPORTER.]

Ireland.

QUEEN'S BENCH CHAMBER.

July 10, 1854.

(Before LORD CHIEF JUSTICE LEFROY.)

REG. v. CARDEN AND OTHERS. (a)

Practice—Admitting to bail—When prisoner entitled to ex debito justitiæ.

Where, from the facts disclosed, it appears doubtful whether an indictment for a felony can be maintained, the prisoner is not, therefore, entitled ex debito justitiæ to be admitted to bail as in cases of misdemeanor, no matter what may be the form of offence charged in the committal.

The prisoners had made an armed attack upon a covered car, with the intention of carrying away by force the prosecutrix, who was seated in it. In the course of the attack, one of the men who came to her assistance was severely beaten and wounded. The principal offender had not succeeded in dragging the prosecutrix from the car, but had moved her from one part of the vehicle to another, while standing outside himself. Assistance having arrived, he desisted and fled. All the parties concerned being arrested were committed on a magistrate's warrant for an assault with attempt to abduct.

Held, that they were not entitled to bail ex debito justitiæ, as the question whether a felony or misdemeanor had been committed could only appear and be settled on the trial, and that it was not a case for the court to exercise its discretion in their favour.

ROLLESTON, Q.C., with whom was Shaw, moved that the prisoners John Carden, Patrick Kinealy, James Atkinson, and Henry Atkinson, should be admitted to bail. The parties are committed for an assault and attempted abduction. From the facts disclosed by the informations, the prisoners have been guilty only of a misdemeanor, and they are consequently entitled to have this application granted. It appears that on Sunday, the 3rd instant, Miss Arbuthnot, whose abduction was attempted by the prisoners, attended divine service at Rathcoran Church, accompanied by the Honourable Mrs. Gough, Miss Laura Arbuthnot, and Miss Lyndon. That on their return they observed Mr. Carden riding after the inside car in which they were seated. That the car was suddenly stopped by one of the prisoners, acting under the direction of,

(a) Reported by P. J. M'KENNA, Esq., Barrister at-Law.

and in concert with Mr. Carden, and that immediately Mr. Carden came to the door of the car and attempted to drag Miss Arbuthnot out. That he caught her by both hands, crying, "Come on, boys, take this one, and don't mind the others." Miss Arbuthnot resisted him successfully, assisted by the other ladies in the car. That Mr. Carden succeeded only in removing her from one part of the car to another, but that though her feet were outside the car at one time during the struggle, he never entirely succeeded in removing her out of it. That the prisoner who had caught the reins of the horse threatened to stab the driver. That a herdsman, who came to the assistance of the ladies, was beaten and wounded severely by the other prisoners, who were armed, while Mr. Carden was struggling with the prosecutrix. That when assistance came he cried out, "Boys, why don't you shoot?"

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—
1854.
—
Practice—
Bail.

LEFROY, C. J.—No doubt Mr. Carden is bailable. The question is, however, is he entitled *ex debito justitiæ* to be bailed? If this cannot be established it appears to me to be an outrage of such a nature, that if the court has a discretion, it should not be exercised in his favour. From the information of Miss Arbuthnot, it appears that she was to a certain extent removed in the car towards the door, and we all know that in a case of larceny it has been held, that the removal of goods from one end of a boat to the other, with the intention of stealing, completes the offence. It is a question whether, within the principle of that case, a complete case of abduction does not appear on the informations. That will only appear on the trial, and the circumstances alone will enable the court which tries the case to decide whether the offence amounts to abduction or not. If there be a possibility of his being convicted of his offence, I do not think he is entitled to be bailed *ex debito justitiæ*.

Rollestone, Q. C.—This case only amounts to a misdemeanor, and as such is bailable of right: (Hayes' Criminal Law, 92.)

Miss Arbuthnot negatives the fact of a removal from the car. To constitute abduction there must be an actual taking from a domicile or from the custody of parents or guardians.

LEFROY, C. J.—Do you contend that if a lady is seized while walking or driving on an open road, the offence may not be thereby constituted?

Rollestone, Q. C.—No; in this case, however, the lady was not in the power of any of the parties in such a way as to complete the offence. She was not taken out of the car.

LEFROY, C. J.—Whether there was an abduction or not can only be decided on the trial, and where there is a possibility of an indictment for a felony being sustained, I shall not admit the parties to bail, unless I think them entitled to the favour.

Corballis, Q. C. *contra*.—Manifestly, this application is not to be granted *ex debito justitiæ*, having regard to all the circumstances of the case. Neither would it be one to be treated with favour, if the application is to the discretion of the court. It is laid down that when the crime is serious, and the evidence clear, that a party should not be admitted to bail in the Petty Sessions Act, 14 & 15

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—
1854.
—

Practice—Bail.

Vict. c. 92, s. 16, clause 1, it is enacted that in cases of assaults, with intent to commit a felony, bail should not be taken.

LEFROY, C. J.—The court should look to the writs sworn to, and if it be possible on these to name an indictment for a non-bailable offence, bail should be refused.

Corballis, Q. C.—It is not enough to entitle the prisoners to be bailed that a felony is not technically stated. Here we have it stated that the prisoner called for his men, asking them what they were doing; that four men then attacked the herdsman again; Mr. Carden cried out, "Why don't you shoot?" This was a felony; cutting and wounding with intent to maim. They were all engaged in a common purpose, and Mr. Carden is liable for the wounds inflicted on the herdsman; his intent is shown by his exclamations. (He cited *R. v. Maginniss*, 5 Cox Crim. Cas. 511.

Shaw, for the prisoner, referred to *R. v. Barronet* (1 P. & D. 51.)

LEFROY, C. J.—I am always glad, however strong my own opinion may be, to find specific authority to support it. I think that it appears clearly I should not exercise the discretion of the court in favour of the prisoner. I had a case before me on circuit, three or four years ago in Sligo, of somewhat similar character, and I recollect having told the counsel for the prisoners that they had been very fortunate in escaping, as I should have felt myself bound to inflict a very severe punishment. The accusation against the prisoners might assume the shape of a conspiracy to commit a felony. I shall not admit any of the parties concerned in this outrage to bail. I take it, I stated the rule correctly, that if a judge, on reading the informations, finds there facts disclosed to make out a case of felony, no matter what may be the form of committal, he is not bound to admit to bail.

NOTE.—The committal in this case was for an assault with intent to carry off the prosecutrix against her will and consent.—REPORTER.

Ireland.

COURT OF CRIMINAL APPEAL.

November 18, 1854.

(Before LEFROY, C. J., MONAHAN, C. J., TORRENS, BALL and JACKSON, JJ.)(a)

REG. v. PATRICK MAHONY. (b)

*Forgery—Promissory notes—Signature of wife by maiden name passed as that of mother-in-law—Variance in Christian names.**In order to complete the offence of forgery, the signature need not be an exact fac-simile of that of the person represented, and a slight variance, if not such as would under the circumstances put a person on inquiry, will not suffice to take such a forgery out of the definition of the offence when applied to the falsely putting the name of an existing person to an instrument, without authority, for the purpose of fraud.**The prisoner, P. M., had promised to get his mother-in-law, "C. W.'s" name to two notes. He brings the two notes which in the meantime he had got his wife to sign by her maiden name, "A. W.," and hands them over, saying, "Here are the notes." On his trial for forging and uttering these notes, the jury found him guilty, being of opinion that, when he got his wife's signature to them, he intended to pass them as the notes of his mother-in-law :**Held, that the conviction was right, and the question which had been thus put to the jury was the correct way of leaving it to them.***T**HE following case was stated for the opinion of the court by the Lord Chief Justice of the Common Pleas:—

Patrick Mahony was tried before me at the last assizes for the county of the city of Kilkenny, for forging and uttering, knowing to be forged, two promissory notes. A copy of the indictment is annexed to this case, and the notes are accurately set forth in the first and second counts thereof. The first witness for the prosecution was Robert Moore, who being duly sworn, stated that he was the travelling agent of the mercantile firm of James Brown, Son, and Co., English merchants, carrying on business at Manchester; that, in the month of January last, the prisoner Mahony was indebted to the said firm in a balance of 68*l.* 18*s.* 10*d.*; that he, witness, being then in the city of Kilkenny, where the prisoner carried on business, pressed for payment of said balance, and threat-

(a) PERKIN, J., was present during part of the argument, but did not remain until the end of the case.

(b) Reported by P. J. M'KENNA, Esq., Barrister-at-Law.

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—
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ened law proceedings unless the amount was paid or secured; that witness had previously ascertained that Mrs. Watters, the mother-in-law of the prisoner Mahony, was a solvent person. She also carried on business in the city of Kilkenny; witness was not aware at that time of Mrs. Watter's Christian name, but has since ascertained that her name is Catherine; after some negotiation with Mahony, witness offered to give him time for the payment of the debt if he got his mother-in-law, Mrs. Watters, to join him in notes for the amount; this Mahony agreed to do, and accordingly, in Mahony's presence, witness drew the body of the two promissory notes now produced, and the prisoner Mahony signed his name to both; this took place in the hotel, in the city of Kilkenny, when witness was there staying; Mahony retained the two notes, saying, he would go to his mother-in-law, Mrs. Watters, and get her to sign them, and that he would return with them in a short time, Mahony accordingly took away the two notes and returned in about an hour to the hotel, where witness remained, and handed witness the two notes as they now are, saying, "Here are the notes; they will be paid before they arrive at maturity." Witness took the notes from Mahony, believing they had been executed by his mother-in-law Mrs. Watters, and continued under that impression until after the notes had arrived at maturity, when Mrs. Watters, on being applied to for payment, denied all knowledge of the notes; they are still unpaid. When witness received the notes from Mahony, he believed the name "A. Watters" to the two notes was the name and handwriting of Mrs. Watters, the mother-in-law, but, as below stated, witness had not heard nor was he then aware what Mrs. Watters' Christian name was.

The next witness for the prosecution was Mrs. Catherine Watters, the mother-in-law, who stated that Mahony was married to her daughter Anne; that she had not authorized any one to affix her name to the notes produced, nor had she done so herself; that she had not been asked to do so; that she never heard of the notes, nor was she aware of their existence, until applied to for the amount after they became due.

Harris, for the prisoner, called two witnesses who deposed that the name "A. Watters" subscribed to the two notes was in the handwriting of prisoner's wife, that they were well acquainted with her handwriting, and that same was in her usual character, that she sometimes in signing her name wrote the name in full "Anne," sometimes merely the initial "A.," more frequently only the initial "A."

Harris, for the prisoner, submitted, that as Mrs. Watter's name was Catherine, and that as the name affixed to the notes was "A. Watters," which he contended was, or stood for, the name of the prisoner's wife, there was no case to sustain the indictment. I thought differently and charged the jury, that if the prisoner got his wife to affix the name "A. Watters" to the notes, he at the time intending to pass them as the notes of his mother-in-law Mrs. Catherine Watters, and that he afterwards passed them

to Mr. Moore for Messrs. Brown, Son, and Co., as the notes of Mrs. Watters, his mother-in-law, that the indictment would be sustained. The jury found him guilty, being of opinion that he got his wife to affix the signature "A. Watters," he at the time intending to pass them to Mr. Moore for Messrs. Brown, Son, and Co., as the genuine notes of his mother-in-law, Mrs. Watters, and that he did in fact afterwards pass them as her notes; but recommended him to mercy on account of his previous good character (one of the jurors having been examined and having deposed to his character), I respited the sentence, and allowed the prisoner to remain out on bail, he and two sureties having entered into a recognizance to attend at the next assizes, to receive the sentence of the court, and have reserved for the consideration of the Court of Criminal Appeal the question whether the fact of the prisoner having got his wife to affix the signature "A. Watters" to the notes mentioned in this case, intending at the time to pass them to the agents of Messrs. Brown, Son, and Co., as the genuine notes of his mother-in-law, Mrs. Catherine Watters, and his afterwards passing them as such genuine notes to Mr. Moore, their agent on their behalf as stated, were sufficient to sustain the indictment.

REG.
"MAHONY."
—
1854.
—
Forgery.

28th October, 1854.

JAMES H. MONAHAN.

County of the City of } The jurors of our Sovereign Lady the
Kilkenny, to wit } Queen on their oath present that
Patrick Mahony, on the 21st day of January, in the year of our
Lord 1854, feloniously did forge a certain promissory note, which
said forged promissory note is as follows, that is to say:—

"£34

Kilkenny, January 6, 1854.

"One month after date we jointly and severally promise to pay Messrs. Brown, Son and Company, or order, at the Provincial Bank of Ireland, Kilkenny, Thirty-four pounds sterling, for value received.

"P. MAHONY,
"A. WATTERS,"

with the intent thereby then to defraud, *contra formam statuti*, &c.

And the jurors, &c., do further present that the said Patrick Mahony afterwards, to wit, on the 21st day of January, in the year of our Lord 1854, feloniously did forge a certain other promissory note, which forged promissory note is as follows, that is to say:—

"£34 18 10

Kilkenny, February 1, 1854.

"One month after date we jointly and severally promise to pay Messrs. James Brown, Son and Company, or order, at the Provincial Bank of Ireland, Kilkenny, Thirty-four pounds eighteen shillings and tenpence sterling, for value received.

"P. MAHONY,
"A. WATTERS,"

with intent thereby then to defraud, *contra formam statuti*, &c.

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The indictment contained also counts for forging two promissory notes not set out, and separate counts for uttering each of the above set-out notes, and for uttering two forged notes.

J. D. Fitzgerald, Q.C. (with whom *Harris*) for the prisoner.— From the facts stated in this case it does not appear that the prisoner has been guilty of forgery. This should be either the signature of a non-existing person, or that of an existing person without the permission of such person, and with a view to defraud. This may have been a wrong act or a fraudulent one of the prisoner, but it does not therefore follow that he has been guilty of the crime of forgery. It does not appear that at the time the bill was brought to Moore, there was any representation in words by Mahony, although his acts might afford an inference. This was a signature by an existing person, namely, the prisoner's wife by her maiden name. This case may be distinguished from *R. v. Mitchell* (1 Den. C. C. 282.) There the bill, the subject of the indictment, had been accepted by a stable boy in Leeds of the name of John Cooper, who was in the habit of accepting bills for the prisoner, but in negotiating it the prisoner stated that the acceptor was a respectable Leeds merchant of that name who was known at Halifax where the bill had been negotiated. In charging the jury, Cresswell, J., told them that if the prisoner got Cooper to sign the bill, meaning at the time to pass it as the bill of Cooper, the member of the firm of D. and J. Cooper, or of an imaginary John Cooper, with the purpose of fraud, he was guilty of forgery. Now, to make that case an authority in point, there should have been another person of the name of Catherine Watters in Kilkenny, whose signature was obtained and passed as that of the respectable Catherine Watters, or of a Catherine Watters in a different position from and other than the real maker. *Reg. v. Mitchell* is also an unsatisfactory case, as there was no counsel for the prisoner, and it is but a meagre report of a circuit decision. What I am to contend for is that here was not a false making a written instrument for the purposes of fraud. *R. v. Mitchell* is at variance with the older authorities. In *R. v. Webb* (3 Brod. & Bing. 228) the bill, the subject of the indictment, was addressed to Mr. Thomas Bowden, baize manufacturer, Romford, Essex, and accepted by Thomas Bowden, payable at 40, Castle-street, Holborn, London. It was proved that no such person was known at 40, Castle-street, or ever resided or carried on business at Romford. A witness for the prisoner stated that he was in partnership with a person named Thomas Bowden, and that the acceptance was his handwriting, but gave no address or description of the acceptor. The jury, having found there was no such person as Thomas Bowden, convicted the prisoner. Erle, J., who tried the case, thinking there was such a person, and that the acceptance was his handwriting, took the opinion of the judges, whether assuming that the acceptance was the handwriting of Thomas Bowden, the prisoner, by giving a wrong description on the face of the bill, was thereby

guilty of forgery, when eleven of the judges (Erle, J., being at chambers) were of opinion that the case did not fall within Parkes and Brown's case (2 Leach, 775); but that, though a gross fraud, it was no forgery. That was a much stronger case than the present, as there there was a false description on the face of the bill: here it was very doubtful whether there was any representation, as there was nothing said by Mahony when delivering the bill. There was here a note which did not represent the signature of an existing person other than the actual acceptor "A. Watters," neither was it put forward as the signature of a non-existing person.

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[PERRIN, J.—You contend that this is like the case of passing a country note on an ignorant person as a note of the Bank of Ireland, and that there is no forgery, but merely a misrepresentation as to an existing instrument.]

Fitzgerald.—In *R. v. Parkes and Brown* (2 Leach Crim. Cas. 775); and cited in 2 Russ. Crim. Law, 324, and 2 East P. C. 963, one of the prisoners, Parkes, had filled the body of the note, and Brown had accepted it as "Thomas Brown." On passing the note, Brown, whose name was correctly stated in the note, stated it was the note of a Thomas Brown of Rington in Shropshire, that he was a gentleman of property, and had 15,000*l.* lodged at his bankers. No person answering this description could be found, or was ever known, and it was proved that the prisoners were connected together in the fraud. The jury having found them guilty, the conviction was upheld as to Brown. In giving judgment, Grose, J., thus defines the offence of forgery, that it was "the false making of a note or other instrument to defraud, which might be done by using the name of one who did not exist, or of one who did exist, without his consent." In that case there was a false representation on passing the note, which distinguishes it from the present. The evidence showed that the note in question was part of a system of fraud, and it is remarked by Russell that the decision in that case has not been considered satisfactory (p. 326, vol. 2); see also Roscoe's Criminal Law, 2nd Edit. p. 441. In *R. v. Watts* (3 Brod. & Bing. 197, reported also in Russ. & Ry. 436), the bill, the subject of the indictment, was addressed to "Messrs. Williams and Co., Bankers, Birchin-lane, London," and purported to be accepted by them. It was proved that there was such a firm whose acceptance it was not, and that there were no other bankers of that name in Birchin-lane, but that at No. 3, Birchin-lane, the name of "Williams and Co." was on a plate on the door, and some bill addressed to such a firm had been accepted payable there and had been paid.

[MONAHAN, C. J.—What struck me in that case was, that there was no finding of the jury that the note was made by the prisoner with the intent to pass it off as that of another person. I stated so on the trial. In this case the prisoner got his wife to put her name to it, intending at the time to pass it as the bill of a third

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person.] In *Hevey's case* (2 Russ. Crim. Law, 326) the prisoner was indicted for forging an indorsement to a bill. The note was one of a printed series of forgeries, and the evidence against the prisoner Bernard M'Carty was that the indorsement was represented by him to be that of another Bernard M'Carty, who was known. After a conviction the opinion of the twelve judges was taken, and they were of opinion that this case was not a forgery, and that the conviction was wrong, because there had been no false indorsement, and the jury had found that the indorsement had been truly made by a real person whose name it purported to be. That is an express authority in favour of the prisoner here. There was here no representation made by the prisoner when the notes were handed over; and the present case is in that way perfectly distinguishable from the cases in which the convictions were upheld.

BALL, J.—Is it not in evidence that the clerk did not know the name of the mother-in-law? The prisoner told him he would get the acceptance of the mother-in-law, and came back after a time with the notes, saying, "Here they are."

MONAHAN, C. J.—I took down the evidence verbatim as to what occurred when the notes were handed over. There was then no false representation in words, but his conduct led to the inference that there was a false representation.

TORRENS, J.—Was it not in pursuance of a contract to get the mother-in-law's name that the prisoner gave these notes? He goes away for that purpose, comes back and says, "Here are the notes I spoke to you about."

MONAHAN, C. J.—With regard to the forgery, what occurred on the uttering was only material as evidence of intent when the acceptances were written. There was evidence to go to the jury that he had got his wife to accept them with the intent of so uttering them; the moment he got her name on one of these bills the forgery was complete, and what took place afterwards is hardly evidence. I confess I do not feel the force of Mr. Fitzgerald's argument as to the absence of no actual statement; for if the prisoner actually stated that these were the signatures of his mother-in-law, after the finding of the jury, as to the forgery, it would have nothing to do with it. The result of holding this not to be a case of forgery will be, that if a person named John Brown has a brother named James, who makes a bill by the initial of his Christian name as "J. Brown," intending to pass it as the acceptance of John Brown, we should go to the length of saying that it would not amount to forgery.

Fitzgerald, Q. C.—I admit it would be a gross fraud: it is another thing, however, to hold that it comes within the definition of a forgery.

MONAHAN, C. J.—Suppose there was another woman in the town of the name of Catherine Watters, and that he got her to put her name to the notes, he at the time intending to pass them as the notes of the Catherine Watters mentioned, would not that be a forgery within the authority of *R. v. Mitchell*? It does not

strike me as making any difference that the prisoner got his wife to put the signature to it. The reason I reserved the case, was to take the opinion of the court as to whether signing "A. Watters," intending to pass it as that of "C. Watters," is to be considered the same as if "C. Watters" had been signed, as it would then be forgery.

JACKSON, J.—It is very common with the humbler classes in the South to call married women by their original name, when the Christian name and not Mrs. is used.

Lynch, Q. C. (with whom Lawson) for the prosecution.—This was not a false representation as to an instrument in existence, like those cases referred to on the other side when convictions for forgery were quashed. This is a false signature, intended as such—fabricated for the purpose of fraud. As to an observation of Judge Perrin that this was like a case in which a note, which was not in fact one of the Bank of Ireland, should be passed on an ignorant person, which would not amount to forgery, I meet it in this way, that, to make it like this case, the note should have been originally fabricated with the intention of so passing it: (*R. v. Nisbett*, 6 Cox C. C. 320.) The latest case upon this subject decided, that putting off the bill of an existing person as that of a fictitious person, is a felonious uttering of the bill of a fictitious drawer. In *R. v. Blenkinsop* (1 Den. C. C. 278, also reported 2 Cox C. C. 420), it was held, that obtaining the signature of an existing person, with intent to issue it as the bill of another person of the same name, was a forgery. Thus the prisoner got his workman to accept a bill, and then addressed it to a person of the same name at Halifax, who was a man of means, and thus got cash for it, and it was held a forgery.

TORRENS, J.—I confess the case, as reported in Denison, seems certainly to apply to the present: "All the judges were of opinion that the putting an address to the drawer's name while the bill was in the course of completion, with intent to make the acceptance appear to be that of a different existing person, was forgery." Here the prisoner got a name put to it with intent to make it appear that of a different existing person.

Lynch, Q. C.—I say Watters is not the name of the prisoner's wife, and it would have been for the prisoner to have given evidence of her being known by her maiden name.

MONAHAN, C. J.—I think the strength of Mr. Fitzgerald's argument is this: if the bills were forgeries, they were intended to represent the mother-in-law's signature, and not that of a non-existing person. There is no doubt that the bills have passed as those of the mother-in-law; and if there be a difficulty, it is that it is not her name, and that thus the present is distinguishable from all the other cases. In the reported cases the actual acceptance always corresponded with the name of the existing person, whose acceptance it purported to be; the offence charged here was forging bills purporting to be the bills of Catherine Watters, and, on investigation, the acceptances are found to be "A. Watters,"

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and not "C. Watters." As regards getting the wife to sign them, I regard it as if he did so with his own hand; I think it makes no difference what the wife's name was, but the material question seems to me to be, at the time he put the name "A. Watters" to these bills, did he then intend to pass them as the bills of "C. Watters." It is plain the "A." was written in such a way as to render it difficult to say whether it was "A." or "C."

LEFROY, C. J.—The prisoner undertook to get the signature of Catherine Watters. He does not get that, but he gets the signature of Anne Watters. How do you make that out to be a forgery of the name of Catherine any more than that of John Doe.

Lynch, Q. C.—*R. v. Fitzgerald* (1 Leach C. C. 20) answers that objection, and decides that signing a wrong Christian name of the person, whose will a false instrument purports to be, is a forgery. It is not necessary that the forged instrument should be an exact copy of what it purported to be. The question here is, as to intention accompanied by acts. The prisoner here intended to pass these notes as those of his mother-in-law, and with that intention he got his wife to put her name to them.

Harris, in reply.—This case may be distinguished from *R. v. Blenkinsop*, because in that case on the face of the bill a false word was inserted, and a wrong description given of the actual acceptor for the purpose of fraud. In *R. v. Fitzgerald*, although the signature to the forged will was as John, the correct description of the deceased person was given in the commencement. "In the name, etc., I, Peter Perry, etc." *R. v. Mitchell* is not entitled to such weight as the earlier and better considered cases.

Cur. adv. vult.

LEFROY, C. J., delivered the judgment of the court.—We are unanimously of opinion that the conviction in this case should be affirmed. About the rule which governs cases of this kind there can be no doubt. It is well settled that the making of a written instrument, with a view to defraud, may be either by the false making of the signature of a non-existing person, or of an existing person without permission. Now here it was not to represent a fictitious person, but an existing individual who was ascertained and known, namely, the mother-in-law of the prisoner, that he put this signature to the notes. He professed to get her name, and he brings to the prosecutor what purports to be her signature, and an execution of the notes by her. It is true that the signature is "A. Watters," not "C. Watters;" we are, however, of opinion that the prisoner cannot avoid the consequences of his fraudulent act by a variation in the signature which would not put a party on inquiry as to its regularity and authenticity. He brought these promissory notes to the prosecutor as the instruments which he had promised to procure, namely, the notes of his mother-in-law; and whether he put this signature to them himself, or got a person to do it by his directions, he is equally guilty. We are therefore of opinion that the case was left to

the jury as it should have been, and that the conviction should be confirmed.

Conviction confirmed.

MONAHAN, C. J., to the clerk of the Crown.—It will be necessary for you to transmit a copy of this case and the ruling of the court to the Clerk of the Crown for Kilkenny, for the information of whichever of the judges shall sit in the Crown Court there at the next assizes, who will have to sentence the prisoner.

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COURT OF QUEEN'S BENCH.

June 1 and 2, 1854.

(Before LEFROY, C.J., CRAMPTON, PERRIN, and MOORE, JJ.)

O'NEILL IN ERROR v. THE QUEEN. (a)

*Jury process—Common law authority of judge of gaol delivery—
Returning jury instant—Form of allocutus.*

The Irish Common Law Procedure Act, 16 & 17 Vict. c. 113, s. 109, which prescribes the summoning of jurors to try civil as well as criminal issues, according to the precept of the judge of assize, does not interfere with the common law authority of the justices of gaol delivery to order a jury to be returned instant, when, from the panel having been quashed, or for any other reason, a sufficient jury cannot otherwise be had.

Semle—The precept of the judge is equally satisfied either by the sheriff's summoning the same set of jurors for the trial of both civil and criminal issues, or by summoning one set of jurors for the trial of civil, and another for the trial of criminal issues.

The allocutus "why the court here should not proceed to judgment and execution," omitting the words "against him," is sufficient when, looking to the record of the previous proceedings, it may reasonably be intended that the prisoner was addressed, and that the verdict had been pronounced in his case.

THE plaintiff in error, Robert Henry O'Neill, having been tried at a session of oyer and terminer and general gaol delivery

(a) Reported by P. J. M'KENNA, Esq., Barrister-at-Law. This case is in every respect equally an authority in both countries, as the Jury Acts, 6 Geo. 4, c. 50 (English), and the 3 & 4 Will. 4, c. 91 (Irish), as far as they touch this question, as also the English and Irish Common Law Procedure Acts, 15 & 16 Vict. c. 76, ss. 104, 105 (English), and 16 & 17 Vict. c. 113, s. 109 (Irish), are the same. There is not, however, in the English Common Law Procedure Act, as in the Irish one, in its schedule an express limitation of the repealing effects of the Act.

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for the county of Antrim, holden at Belfast during the spring assizes of 1854, before Mr. Serjeant Howley, upon an indictment for wilful murder, and found guilty and sentenced accordingly to death and execution, he sued out a writ of error to reverse the judgment of the court below. The record and assignment of errors were as follow :—

County of Antrim, } The jurors for our Lady the Queen, upon
to wit. } their oath do say and present that Robert Henry O'Neill, late of Belfast, in the county of Antrim, private soldier, on the 22nd August in the seventeenth year of the reign of the reign of our Sovereign Lady Victoria, with force and arms, one Robert Brown, in the peace of God and of our said Lady the Queen then being, feloniously, wilfully, and of his malice aforethought, did kill and murder; against the peace of our said Lady the Queen, her crown and dignity.

And thereupon at the same assizes, sessions of oyer and terminer and general gaol delivery, cometh the said Robert Henry O'Neill, under custody of James Edmond Leslie, Esq., sheriff, to which, for the cause aforesaid, he was heretofore committed, and being brought to the bar of the court here in his proper person, and having heard the said indictment read, and it being demanded of him how he will acquit himself thereof, saith that he is not guilty of the premises in and by the said indictment alleged against him, and thereof for good and evil putteth himself upon the country; and Walter Bourne, coroner and attorney of our Lady the Queen, in and for said county, who for our said Lady the Queen in this behalf prosecuteth, doth the like.

And thereupon it is by the court here ordered that a jury of good and lawful men of the body of the said county, duly qualified according to law, immediately come before the justices by whom the truth of the matter may be better known, who are not of kindred or affinity with the said Robert Henry O'Neill, to try upon their oaths and say whether he the said Robert Henry O'Neill be guilty of the premises aforesaid, in manner and form as above charged upon him or not. And the jurors for that purpose impanelled, and now here, by James Edmond Leslie, Esq., sheriff of the said county, returned, being called, come, and twelve of the said jurors and upwards appear and answer to names.

Whereupon the said Robert Henry O'Neill, the prisoner at the bar, challenges the array of the said panel so ordered by the court to be, and so returned as aforesaid, because he says that heretofore, and before the present assizes, the judge assigned to hold these assizes duly issued his precept pursuant to the Common Law Procedure Amendment Act (Ireland) 1853, to the sheriff of the county of Antrim, and thereby commanded the said sheriff to summon a competent number of jurors for the trial of all issues, whether civil or criminal, which might come on for trial at these assizes. And that thereupon afterwards the said sheriff did summon a large number, to wit, 150 persons, qualified to be jurors of the said county, as jurors for the trial of all criminal issues

which should come on for trial at these assizes, and another large number, to wit, 150 persons, qualified to be jurors of the said county, as jurors for the trial of all civil issues which should come on for trial at these assizes; and the said sheriff did, before the said assizes, array the names of the persons so respectively summoned as jurors as aforesaid on two separate pieces of parchment, by setting out the names of the persons so respectively summoned as jurors for the trial of criminal issues on one of the said pieces of parchment, and by further setting out the names of the persons so summoned as jurors for the trial of civil on another and different one of the said pieces of parchment.

And thereupon at these assizes the said sheriff returned to the court here the so first-mentioned piece of parchment and names thereon, being the names of the persons so summoned as jurors for the trial of criminal issues as aforesaid, as and for the panel of jurors for the trial of all criminal issues which should come on for trial at these assizes; and the said sheriff returned to the Record Court at these assizes the said other and secondly-mentioned piece of parchment, with the names thereon, being the names of the persons so summoned as jurors for the trial of civil issues as aforesaid, as and for the panel of jurors for the trial of all civil issues which should come on for trial at these same assizes. And that afterwards at these same assizes a competent number of the said jurors so returned to the court here as jurors, and impanelled for the trial of criminal issues as aforesaid, attended; and afterwards and before he the said Robert Henry O'Neill was called on to plead as aforesaid, a certain criminal issue came on for trial between our said Lady the Queen and one James Hogan, then here present; and thereupon the said James Hogan challenged the array of the said panel of jurors so returned by the said sheriff for the trial of criminal issues as aforesaid, and thereupon it was considered by the court here that the said panel should be, and the same was thereby ordered by the said court to be, quashed, as by the records of the said court, reference being thereunto had, will appear; and no order was then or since has been made to quash the panel of the said jurors so returned to the said Record Court for the trial of all civil issues at these assizes as aforesaid, and a competent number of the persons so returned to the said Record Court as last aforesaid are in attendance accordingly at these assizes in the said Record Court; and the order of the court here, under which the said panel, the array whereof is hereby challenged, was returned as aforesaid, was thereupon made. And for a further ground of challenge in this behalf, the said Robert Henry O'Neill says that none of the jurors on the said panel, so hereby challenged as aforesaid, has been summoned for the trial of all issues, whether civil or criminal, which should come on for trial at these present assizes, pursuant to the provisions of the Common Law Procedure Amendment Act, Ireland, 1853.

Whereupon the said Robert Henry O'Neill prayed that the

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said panel so arrayed pursuant to the said order may be quashed, and so forth.

And the said Walter Bourne, coroner and attorney to our Lady the Queen, who for our said Lady the Queen in this behalf prosecuteth as aforesaid, comes and demurs to the challenge of the said Robert Henry O'Neill, and saith that the same is not sufficient in law to quash the array of the panel aforesaid, and that there is no necessity for him the said Walter Bourne, nor is he obliged by the law of the land, to answer thereto in manner and form as above alleged, wherefore he prays judgment, and that the array of the said panel may be affirmed, and so forth. And the said Robert Henry O'Neill now here joins in said demurrer.

It is thereupon considered and adjudged by the justices and commissioners aforesaid that said demurrer be allowed, and that said challenge to the array of him the said Robert Henry O'Neill be overruled, and that the array of the panel so last returned as aforesaid, be in all things affirmed. And thereupon, the jurors so impanelled and returned as aforesaid being called, a competent number thereof appear to answer to their names. And the said Robert Henry O'Neill thereupon peremptorily challenged eighteen of the jurors so last appearing and answering to their names as aforesaid, and thereupon twelve others of the said jurors so as aforesaid appearing and answering to their names, to wit, John Coleman, John Clarke, John Lowry, Thomas McConnell, James John Fulton, William Murdock, Francis Mason, David Gamble, John Herlock, Robert Lowther, James Graham, and John Gamm are tried and in due form of law sworn to speak the truth of and concerning the premises in said indictment charged as aforesaid, and upon their oath say that the said Robert Henry O'Neill is guilty of the felony and murder charged against him as in and by the said indictment is alleged; and it being required of him the said Robert Henry O'Neill to show why the court here should not proceed to judgment and execution, who further saith not. Whereupon all and singular the premises being seen they the court here fully understood.

It is considered and adjudged by the justices aforesaid, that the said Robert Henry O'Neill, for the felony and murder whereof he so stands indicted and convicted as aforesaid, be hanged by the neck until dead, and that his body be afterwards buried within the precincts of the prison in which he has since such conviction as aforesaid been confined. And he the said Robert Henry O'Neill for the cause aforesaid, is by the court committed to the custody of James Edward Leslie, Esq., sheriff, and so forth.

Upon this record the following errors were assigned:—And now, that is to say on the 25th May, 1854, before our Lady the Queen at Dublin, cometh the said Robert Henry O'Neill into court here under the custody of the keeper of Her Majesty's gaol of the county of Antrim, by virtue of a writ of *habeas corpus* issued on that behalf, and immediately saith that in the record and

process aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit:—

That upon the said demurrer to the said challenge of him the said Robert Henry O'Neill to the array of the said jury so ordered to be impanelled as aforesaid, judgment is given for our said Lady the Queen, against him the said Robert Henry O'Neill; whereas by the law of the land, judgment ought to have been given thereon for him the said Robert Henry O'Neill against our said Lady the Queen. Wherefore in that there is manifest error. There is also error in this, that upon the said demurrer to the challenge of him the said Robert Henry O'Neill to the array of the said jury, judgment is given that the said demurrer be allowed, and that said challenge to the array be overruled, and that the array of the said panel be in all things affirmed; whereas by the law of the land, judgment ought to have been given thereon that the said demurrer be overruled and the said panel be quashed; wherefore in that there is manifest error, and this the said Robert Henry O'Neill is ready to verify; wherefore he prays that the judgment of death and execution aforesaid and other errors in the record and proceedings aforesaid appearing may be reversed, annulled, and altogether had for nothing, and that he may be restored to the free law of the land, and all that he hath lost by the occasion of the said judgment.

Joinder in error.

Ferguson (with him *Napier, Q.C.*), for the plaintiff in error.—The *allocutus* is bad for insufficiency. It should have gone on to say against him the said Robert Henry O'Neill. So it appears from all the precedents. In *O'Brien v. The Queen*, 2 H. L. Cas. 465, these words being in the *allocutus*, it was therefore held sufficient: (4 Chitt. Cr. Law; 6 War State Trials; *R. v. Boyce*, 4 Burr. 2087.) From what appears on the record there was another panel before the Record Court which should have been exhausted before the judge made this order to return a jury immediate. The Legislature intended by the Common Law Procedure Act to give a superior class of jurors for the trial of criminal issues, and the proceeding here has been a violation of that act. The 109th section of that act provides, "That no jury process shall be necessary or used in any action; but the precept issued by the judges of assize to the sheriff to summon jurors for the assizes shall direct that the jurors be summoned for the trial of all issues, whether civil or criminal, which may come on for trial at the assizes, and the jurors shall thereupon be summoned in like manner as at present;" and the 117th section enacts that "the jurors whose names are contained in such panel as aforesaid, shall be the jurors to try the causes at the assizes and sittings for which they shall be summoned respectively." The court, as far as appears from the record, was one of oyer and terminer and not of gaol delivery, and, if so, it had no right to order a jury to be returned instanter, but to issue a *venire facias* returnable within a specified time. The power to order on terms, a jury to be

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returned instanter, is strictly confined to judges of gaol delivery : (Dow. P. C. 560, section 1 ; and 562, section 5, *et seq.* ; see also the cases in note there of Hall, 261, 264 ; Rastall's Entries, 384, 385 ; and Foster Cr. Law, 63. He also cited 2 Gudes Crim. Pract. 8 ; *O'Connell v. The Queen*, 11 Cl. & Fin. 247 ; Vin. Abr. " Trial." P. ; 2 Hayes Crim. Law, 592 ; *Holt v. Meadowcroft*, 4 M. & S. 467 ; 2 Gab. Dig. 120f.)

H. Law (with whom *Sir Thomas Staples, Corballis, Q.C.*, and the *Attorney-General*), for the Crown.—As to the form of the *allocutus*, no particular words are necessary, and the words which are said to have been improperly omitted as mere surplusage : (*O'Brien v. The Queen*, 2 H. L. Cas. 494.) As to the other point, the Common Law Procedure Act is an affirmative act, and does not take away the power inherent in the judge of gaol delivery (as the judge here was) to order a jury to be returned instanter. Unless this power was expressly taken away it remains : (Bac. Abr., title " Statute," G.) If the sheriff acted rightly, as we say he did when the panel was quashed, the judge then had the right to get a jury returnable immediately to dispose of the business ; if he were wrong there was no proper panel before the court, and the necessity for exercising this arose. They also cited *Hayes v. The Queen*, 2 Cox Crim. Cas. 611 ; 1 Tremayne, P. C. 26.

Napier, Q.C., replied, without prejudice to the right of the Crown, to the general reply.

June 15.

LEFROY, C. J., now delivered the judgment of the court.—This case comes before the court on a writ of error brought by the prisoner, and he assigns for error two principal grounds ; one, error in the proceedings under which the verdict was found, the other affecting the proceedings on which final judgment was pronounced. We are clearly of opinion that there is no ground for maintaining either the one or the other. It was not from any doubt that we entertained that we did not proceed at once to give our opinion ; but, from the nature of the case affecting life, and from its invoking the construction and consideration of an act which has hitherto received no judicial interpretation, and from the line of argument taken, involving a great variety of topics which we wished to consider fully, in order to ascertain how far they could affect our judgment, we thought it becoming to take time. Now we are of opinion that, upon any or either view that may be taken, in the construction of this act, respecting the proceedings on the trial, according to what appears on the face of this record, there was no error. It appears on the face of the record, that a precept was issued by the judge of assize to the sheriff of the county where the trial was to be heard, whereby he was directed to summon a jury for the trial of all issues, as well civil or criminal, that the way in which the sheriff executed the precept was by summoning a cer-

tain number of jurors for the trial of criminal issues, and a certain other number for the trial of civil issues (but there is nothing on the record to show that a panel was returned of persons to serve as both); that in the course of proceeding in the Crown Court, the panel in that court for the trial of prisoners was quashed. From this moment there was no panel of any sort in that court. The record goes on to state that, under these circumstances, when issue was joined between the Crown and the prisoner, the judge who sat under the commission of gaol delivery made an order for the sheriff to return a jury immediately, and in pursuance of that order a jury was summoned, who tried the prisoner and by whom he was convicted. He challenged the array, inasmuch as none of those jurors had been summoned pursuant to the late act for the trial of all civil and criminal issues (the Criminal Law Procedure Act.) If he were right in that objection, there has been a mistrial; and if his trial was of necessity to be had, and could only be had under this late act, whatever construction we may put on it, it would have been a bad trial. Whether the construction of the act be that the sheriff must return a panel of jurors, every individual of which panel must have been summoned for both purposes, or whether he may, under this act, make two panels composed of such persons—whichever construction be the right one, there was not a jury before the court competent to try this case, if this panel was quashed. This at once brings us to the question, was there any jurisdiction existing in the judge of gaol delivery to order a panel to be returned such as he might have ordered previous to this act? Has the act taken away the right of such judge and deprived him of the right which he had before this act at common law, and which was recognised by the Jury Act next preceding this act now under consideration? The authority of the judge of gaol delivery at common law was this—if by any fatality or neglect of the sheriff, or from the panel becoming exhausted by challenges, or from any other cause whatever, it became inoperative, he had a right by verbal order to direct the sheriff to return a jury immediately when issue was joined between the Crown and the prisoner. The sheriff was bound to return a panel, and by that the prisoner might and should be tried. That such was his jurisdiction appears from the highest authority—from Hale's Pleas of the Crown, and more especially from the judgment of Treby, C. J., in *Cooke's case*, 13 Hargrave's St. Tr. That was a decision made under the most solemn circumstances, on the trial of a man for a capital offence, before the full court; and we have there a full and accurate statement of the common law authority of such judges, and of the earlier cases on the point. We have the same statement in Hawkins' Pleas of the Crown, and in Foster's Crown Law. Here, then, if nothing has intervened to take away the exercise of that right, we have had a trial under that authority. For if that authority existed previous to the late act, and has not been taken away by that act, the mandate of the judge was legal, the return to it was legal, and the trial with such panel perfectly legal. That

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case of *Cooke's* was a very strong one, because the first panel then had been acted on to the extent of calling nine jurors. The return could not in that case be immediate, as the prisoner had a right to a copy of the panel; but, as Sir Michael Foster states it, that was the only reason why the new panel was not ordered to be returnable instanter, and why the trial was postponed. The next question is then, has that common law authority been taken away by any jury act? The act next preceding this present act was the 3 & 4 Will. 4, c. 91, s. 15, and, so far from the act taking away that right, that, while it regulates all about the trial of civil as well as criminal issues, it contains a specific proviso "that nothing therein contained shall be construed to prevent the Court of King's Bench, or any court of oyer and terminer, gaol delivery, or court of sessions of the peace, from respectively having and exercising the same power and authority as they may now have and exercise, in issuing any writ or precept, or in making any award or order, orally or otherwise, for the return of a jury for the trial of any issue before any of such courts respectively, or for the amending or enlarging the panel of jurors returned for the trial of any such issue; and the return to every such writ, precept, award or order, and the proceedings thereon, shall be made in the manner heretofore used and accustomed in such courts respectively—save and except that the jurors shall be returned from the body of the county, and not from any particular venue within the county, and shall be qualified according to this act." So far, therefore, as the Jury Act goes, it leaves untouched the common law power of the judge of gaol delivery. Now has this last act, this Common Law Procedure Act, taken away that power, or has it in any manner interfered with the saving made in the previous statute? For the purpose of ascertaining the intention of the Legislature let us look to the preamble, and see what it imports: "Whereas it is expedient to simplify and amend the course of procedure as to the process, practice, pleadings and evidence in the superior courts of common law in Ireland, so as to make the same less dilatory and expensive, and to prevent substantial justice from being defeated by reason of the variety of forms of actions, and the technicalities and prolixities of pleadings, and the unnecessary length of records, and to consolidate the provisions of several statutes and rules of court relating to such proceedings: Be it therefore enacted," &c. According to the preamble, we have no right to expect anything touching criminal proceedings. In this act especially, section 3 provides that, "from and after the commencement of this act the several acts and parts of acts set forth in the schedule A. to this act annexed, so far as the said act or parts of any act relate to personal actions or actions of ejectment in the superior courts of law in Ireland, and no further, or otherwise to the extent to which such acts or parts of such acts are by such schedule expressed to be repealed are hereby repealed, except as to anything done before the commencement of this act, and except so far as may be necessary for the purpose of supporting

and continuing proceedings heretofore taken," &c. And the 241st, "that the schedules annexed to this act shall be deemed to be a part of this act, with such modifications and departures as the particular facts of the case may render necessary." Now what do we find in the schedule annexed to this act? The portions of the 3 & 4 Will. 4, contained only in sections 10 and 12 and that only so far as they relate to personal actions. The 15th section of the 3 & 4 Will. 4, c. 91, which expressly saves the common law jurisdiction of the judge of gaol delivery, is not repealed, and the authority of the judge of gaol delivery still remains as it was at the common law. The parts of the 10th and 12th sections, so far only as they relate to personal actions, are repealed, and everything else re-enacted; and therefore, not alone by the common law does it exist, but also by the antecedent statute law is the power of the judge recognised. We then come to the only two sections of this act which import to deal with criminal proceedings, and which are entitled juries and jury process; and therefore all the rest of this act is to be looked on as not interfering with the previous law. I have already referred to the intention of the Legislature; but, by the 109th section, the statute has to a certain extent interfered with criminal proceedings; that section enacts that "no jury process shall be necessary or used in any action, but the precept issued by the judges of assize to the sheriff to summon jurors shall direct that the jurors be summoned for the trial of all issues, whether civil or criminal, which may come on for trial at the assizes, and the jurors shall thereupon be summoned in like manner as at present." We have then a complete extinguishment of the only jury process that antecedently existed. We have an extinguishment of any jury process on the trial of criminal issues; but, inasmuch as the Legislature took away all the means of getting a jury to try civil issues, they provided as to the manner in which such juries were to be summoned. They were to be summoned by inserting into the precept a direction to the sheriff that at the same time and on the same day he should summon jurors for the trial of civil as well as criminal issues; and, whether we read that as a provision that each individual should be summoned for the trial of both classes of issues, or whether he should summon one set for one purpose and another for the other, by either course he equally satisfies the precept. This, however, cannot in any way interfere with the power of the judge of gaol delivery, to order a jury to be returned instant, for he does not derive his authority from this act, but he holds it independently, unless this act takes it away. This is an affirmative act, and I cannot find anything in it taking away that authority. Whatever be the construction of the act as to the duty of the sheriff, the common law authority of the judge is still untouched, and the trial in this case has therefore been properly conducted. If the trial had taken place with a panel under the precept directed by the last act, a violation of the act would have been fatal. The panel returned under this act, however, was quashed,

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and, therefore, there was no panel under this or any other jury act in the court; the authority of the judge of gaol delivery might therefore be interposed; acting on that authority he got a panel returned instanter, and with that the trial took place. Without, therefore, at all deciding what may be the duty of the sheriff under this act, we have come to the conclusion that the trial was legally had. There was another objection taken, though not much relied on in argument by the prisoner's counsel, that it does not appear on the face of the record that, when the prisoner was called on for what he had to say why the court should not proceed to pronounce judgment, the words "against him" were omitted. Now we have on the record the finding of the jury immediately before the *allocutus*, that they had found the prisoner guilty of the crime charged against him, and that thereupon he was asked what he had to say why the court should not proceed to judgment. Why it is only to read the word judgment with the preceding words (they form part of the same sentence), and there could not be an imaginable doubt but that this was addressed to him; but, if there was any necessity for an authority, that case of *Reg. v. O'Brien* furnishes it. We are, therefore, unanimously of opinion that the judgment must be affirmed.

The prisoner having been brought up under a *habeas corpus*, the *Attorney-General* now moved that he be remitted to the custody of the sheriff of the county of Antrim, and an order was accordingly made to that effect.

COURT OF QUEEN'S BENCH.

(Before LORD CAMPBELL, C.J.)

January 24, 1855.

REG. v. THE INHABITANTS OF BEDFORDSHIRE.

*Bridge—Liability to repair—Reputation—Private obligation.**Indictment for nonrepair of a public bridge, and plea, setting up the duty of private persons, ratione tenuræ, to repair distinct parts of the bridge:**Held, that evidence of reputation, such as declarations by deceased persons, that the county was the proper party to repair, was admissible.*

THIS was an indictment against the county for the nonrepair of Harold's Bridge, over the Ouse, in the county of Bedford.

Plea.—That Earl de Grey, Mr. Alston, and Mrs. Trevor were respectively liable, *ratione tenuræ*, to repair the three northern arches of the bridge.

At the trial before Cresswell, J., at Huntingdon, a verdict was found for the prosecutors.

A rule *nisi* having been obtained, on the ground of the rejection of evidence of reputation, viz., the declaration of deceased persons as to the parties liable to repair, which was tendered at the trial.

January 18.

Tozer and Wells showed cause, and Worlledge and Pearse supported the rule.

Authorities cited:—9 Hen. 3, c. 15; 13 Co. Rep. 33; *Pritchard v. Powell*, 10 Q. B. 589; *R. v. Wavertree*, 2 Moo. & Rob. 353; *Drinkwater v. Porter*, 7 C. & P. 181; *R. v. Sutton*, 8 A. & E. 516; *Earl of Carnarvon v. Villabois*, 13 M. & W. 313; *Dunraven v. Lewellyn*, 15 Q. B. 791; *R. v. Antrobus*, 2 A. & E. 793; *Weeks v. Sparks*, 1 M. & S. 686; *Morewood v. Wood*, 14 East, 329; *Rogers v. Wood*, 2 B. & Ad. 245; *R. v. Cotton*, 3 Camp. 444; *Evans v. Rees*, 10 A. & E. 151; *Henley v. Lyme Regis*, 8 Bligh.

REG. N. S. 690; *R. v. Leigh*, 10 A. & E. 39; *Laybourn v. Crisp*, 4 M. & W. 320; *Pim v. Curell*, 6 M. & W. 234; *R. v. Bucklugh*, 1 Salk. 358; *R. v. Watts*, 7 Mod. 55. *Cur. adv. vult.*

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JUDGMENT.

LORD CAMPBELL, C. J.—The question which we have to determine in this case is, whether, on the trial of an indictment for the nonrepair of a public bridge, with a plea that third persons are bound to repair the bridge *ratione tenuræ*, evidence of reputation is admissible. The law of England lays down the rule that, on the trial of issues of fact before a jury, hearsay evidence is to be excluded, as the jury might often be misled by it; but it makes exceptions where a relaxation of the rule tends to the real investigation of truth and the attainment of justice. One of these exceptions relates to matters of public or general interest. The term “interest” here does not mean that which is interesting from gratifying curiosity, or the love of information and amusement; but that in which a class of the community has a pecuniary interest, or some interest by which their legal rights or liabilities are affected. The admissibility of the declarations of deceased persons in such cases is admitted, because these rights and liabilities are generally of ancient and obscure origin, and may be acted on only at distant intervals of time; and distinct proof of their existence, therefore, ought not to be required, because, with local matters in which the community are interested, all persons living in the neighbourhood are likely to be conversant, and common rights and liabilities being naturally discussed, what is talked of in public conversation respecting them may be presumed to be true, for conflicting interests would tend to contradictions from others if the statements were false; and thus a trustworthy reputation may arise from the concurrence of many parties unconnected with each other, who are all interested in investigating the subject. But that relaxation has not been, and ought not to be, extended to questions relating to matters of mere private interest; for, respecting these, direct proof may be given, and no trustworthy reputation is likely to arise. Let us now, upon these principles, examine whether the issue joined on the record raises a question on which evidence of reputation ought to be admitted. It does involve matters of private right, namely, whether certain lands are burdened with the charge of repairing certain arches of a bridge—a matter of great importance to the owners of these lands; but does it not likewise relate to matter of public and general interest within the received legal meaning of the words? All the inhabitants of the county of Bedford, who have any property liable to be assessed to the county rate, have an interest in the question whether the bridge is to be repaired by the county, or whether the county is exempted from this burden, the obligation to repair it lying upon the owners of certain lands *ratione tenuræ*. The amount of the sum which every such inhabitant is liable to contribute to the county rate would be affected by the verdict of the jury. There is likewise

another class of the community who have an interest in this question—probably not so numerous, but sufficiently numerous to make it a matter of public interest—those who have occasion to use the bridge. When it becomes ruinous and impassable, as it now is, the liability to repair it is a matter of much importance to this class of the community. If they indict the county, the burden of repairing lying on the owners of the lands *ratione tenuræ*; or if they indict the owners of the lands, the burthen of repairing lying on the county, and they fail in the prosecution, they incur a heavy expense, and the bridge remains ruinous and impassable. The question, therefore, is almost sure to be discussed in the neighbourhood, and a true reputation upon the subject is likely to prevail. Mr. Tozer contended that the evidence should be excluded, because the deceased person, whose declaration is to be admitted could only draw his inference from some act of repair, and this would be, in substance, admitting evidence of reputation of a particular fact: but the deceased person may have spoken from a distinct reputation prevailing in the neighbourhood without reference to anything done within his own knowledge; or he and others may have heard the owner of the lands in question admit that he, the owner, had repaired and was liable to repair the bridge *ratione tenuræ*. If the possibility that the deceased person's inference may proceed from some defective premises were sufficient to exclude it, this head of evidence would be entirely put an end to. The weight to be attached to it must vary exceedingly, and perhaps can never be very great; but the law says that such evidence is to be received. If the question were, whether a bridge be a public bridge, which the public have a right to use, and the county be bound to repair, there seems to be no doubt that evidence of reputation would be admissible; and there seems no occasion for following a different course where the question is whether the county or an individual be bound to repair. Here the private liability of the individual comes in; but the question of the liability of the county remains. The answer expected to the question overruled probably was, that the witness had heard his deceased father say that there was in the county of Bedford a reputation respecting the liability to repair certain arches of the bridge, namely, that they should be repaired by the owners of the land mentioned in the plea. This does touch the private right, and throws the burden on individuals; but, at the same time, it touches the question whether the county is bound to repair; and it indicates the persons against whom proceedings should be instituted before the magistrate, with a view to obtain the repair of the bridge, this being matter clearly of public interest. There certainly is an express authority on the other side, and very much to be respected, in the case of *Reg. v. The Inhabitants of Wavertree*, 2 Moo. & Rob. 353. On the trial of an indictment for not repairing a highway, the counsel for the defendants having offered evidence of reputation that the owners of certain lands adjoining the road were bound to repair *ratione*

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tenuræ (I read the words of the report): "Maule, J., was of opinion that evidence of reputation could not be admitted to establish the liability to repair *ratione tenuræ*, that liability being matter of a private nature." But it would appear from the report that the point was not argued, and that no authority was cited; and the verdict having been for the defendants, there was no opportunity of questioning the ruling of the learned judge. My brother Crompton, J., was then counsel for the defendants and got the verdict, and therefore there was no opportunity of reviewing the decision of the judge, as there would have been if the verdict had been for the prosecution. The liability of the individual to repair *ratione tenuræ*, as far as he was concerned was a matter of a private nature, but it involved the liability of the inhabitants of the township to repair, which was a matter of a public nature affecting the pecuniary interest of a class of the community. Another authority likewise entitled to great respect in a question put from the bench during the argument by the defendant's counsel in the case of *Rex v. Antrobus*, 2 Ad. & E. 793, on the trial at bar of an information against the sheriff of a county for not executing a criminal sentenced to death; it was proposed to ask the witness whether he had heard that it was the custom for the sheriff to be exempt from performing, or for another officer to perform, the duty in the particular county. There Patteson, J., said, "It is something like a charge to repair a bridge *ratione tenuræ*. Can that be supported by evidence of reputation, because the whole country is interested in the repair of the bridge?" This certainly shows that at the moment the impression on the mind of that most learned judge was, that such evidence was inadmissible. But the authorities on the other side seem to us considerably to prevail. In the first place, *Rex v. Cotton*, 3 Camp. 444, shows that in the year 1813 it was the opinion of the most learned lawyers then in the profession, that such evidence was admissible. On a trial before Dampier, J., which I remember took place in the Crown Court of Stafford, on an indictment for not repairing a highway, which it was alleged that the defendant was bound to repair *ratione tenuræ*, evidence of reputation was offered on the part of the prosecution to prove the liability. Lord Tenterden, then at the bar, as counsel for the defendants, objected to its admissibility only on the ground that it was *post litem motam*. Dampier, J., after observing that the question was one of novelty and importance, and regretting that he had to decide it without being subject to review, says:—"I have certainly had the advantage of hearing it ably argued on both sides. I am of opinion that the document is not admissible as evidence of reputation. The reason for admitting the declarations of deceased persons upon public rights made *ante litem motam*, is that these declarations are considered as disinterested and dispassionate, and made without any intention to serve a cause or mislead posterity; but the case is entirely altered *post litem motam*. Declarations there made are so likely to be produced by interest, prejudice or passion, that no reliance can safely be placed

upon them; and it has therefore been wisely decided that evidence of reputation arising *post litem motam* shall not be admitted." This very distinguished judge, after full argument and deliberation, thus intimates his opinion that the question was substantially upon a public right, and that if the evidence of reputation offered had arisen *ante litem motam*, it ought to have been admitted. But in the *Kelham Bridge* case (*Reg. v. Sutton*, 8 A. & E. 516), the very point appears to have been expressly and solemnly decided by this court; that being an indictment for nonrepair of a road, in which it was alleged that the defendant was bound to repair *ratione tenuræ*. Certain documents were admitted at the trial, which were of a tendency to show a reputation against the immemorial obligation relied on; and, on a new trial being moved for on account of their admission, it was argued at great length that they were not admissible as evidence of reputation. Lord Denman, C.J., afterwards, in delivering the considered judgment of the court, in which the rule for a new trial was discharged, says:—"Much discussion appears to have taken place at the trial, as well as in this court, respecting the purpose for which this evidence was received, as if it might be admissible in some points of view, though not in others. We find it unnecessary to consider any distinctions of this kind, because we are clearly of opinion that these documents, all and each of them, were material to the issue, and good evidence towards proving it." One of these documents was a record of a prosecution in the reign of Edward the Third against the Bishop of Lincoln for not repairing this bridge, with a verdict of not guilty, and a declaration by the jury, when asked "Who of right is bound the aforesaid bridge to repair?" that they are entirely ignorant. This case has since been considered as deciding that evidence of reputation is admissible respecting the liability to repair a bridge *ratione tenuræ*. In the case of *Lord Dunraven v. Lewellin*, 15 Q. B. in the Exch. Ch., where the question arose whether evidence of reputation is admissible respecting a different right had been properly rejected, Mr. Ellis, counsel for the plaintiff in error, having to argue for the admissibility of the evidence, and relying on the *Kelham Bridge* case, said that it was there held that the defendants might show by an old verdict, which was considered to be in the nature of reputation, that a party unconnected with the defendants had formerly been acquitted of such liability. This falls from the counsel; and what follows falls from a very learned judge, my brother Parke, B., interposing, observes the repair of a bridge touched a public right, thereby intimating that such had been the decision, and that the decision was right; at the same time pointing out the ground on which it is to be supported. My brother Martin, B., then at the bar, being counsel for the defendant in error, in commenting upon the *Kelham Bridge* case, which it would have been his interest to impeach (Mr. Ellis had to support it, and Mr. Martin's interest would have been to impeach it), says:—"There the road-right in question was strictly a public right; and the evidence was properly admitted.

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Drinkwater v. Parker, 7 C. & P. 181, respecting a public landing-place, before my brother Coleridge, and *Lord Carnarvon v. Villebois*, 13 M. & W. 313, respecting a right of free warren, are further instances of evidence of reputation being admitted in a matter of private right, although the question might be said, as here, to involve a matter of public interest. For these reasons, and on these authorities, we think that in the present case the evidence of reputation was improperly rejected, and that the rule for a new trial should be made absolute.

Rule absolute.

BAIL COURT.

January 29, 1855.

(Before ERLE, J.)

REG. v. THE INHABITANTS OF THE TOWNSHIP OF GATE
FULFORD, YORKSHIRE. (a)

Certiorari—Road indictment—Grounds for motion.

Since the 16 Vict. c. 30, it is necessary, in order to obtain a *certiorari*, to remove an indictment into this court, to be shown by the party applying for the same that a fair and impartial trial of the case cannot be had in the court below, or that some question of law of more than usual difficulty and importance is likely to arise upon the trial, or that a view of the premises in respect whereof any indictment is preferred, or a special jury may be required for the satisfactory trial of the same.

IN this case an indictment had been preferred under an order of justices at the last assizes against the above defendants for the nonrepair of a highway, and it was now sought to have the indictment tried upon the civil side of the assizes; and for that purpose the present motion was made for a *certiorari* upon the following affidavit:—"John Holtby, of the city of York, attorney-at-law, upon his oath, saith as follows:—That he is the attorney retained to defend the above defendants on an indictment against them for the nonrepair of a highway alleged to be in the aforesaid township, that the said indictment was preferred at the assizes held at York on the 12th day of July, 1854, and found by the grand jury at the same assizes; that upon motion made by counsel instructed by

(a) Reported by T. W. SAUNDERS, Esq., Barrister-at-Law.

this deponent to appear on behalf of the said defendants, and by consent of counsel instructed to appear on behalf of the prosecutor of the said indictment, it was ordered by the Honourable Mr. Baron Platt, one of Her Majesty's judges appointed to hold the aforesaid assizes, that the trial of the aforesaid indictment should be postponed until the next ensuing assizes to be holden at York; that this deponent has been informed and believes, that on the trial of the said indictment, the question whether the said defendants are liable to repair, and the right to repair will come in issue."

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By the 16 Vict. c. 30 ("An Act for the better prevention and punishment of aggravated assaults upon women and children, and for preventing delay and expense in the administration of certain parts of the criminal law"), the 4th section, after reciting that, by reason of the establishment of a Court of Criminal Appeal, the removal of indictments by writs of *certiorari* is seldom necessary for the decision of questions of law, but is nevertheless sometimes resorted to for the purposes of expense and delay, enacts "that no indictment, except indictments against bodies corporate not authorised to appear by attorney in the court in which the indictment is preferred, shall be removed into the Court of Queen's Bench, or into the Central Criminal Court by writ of *certiorari*, either at the instance of the prosecutor, or of the defendant (other than the Attorney-General acting on behalf of the Crown), unless it be made to appear to the court from which the writ is to issue, by the party applying for the same, that a fair and impartial trial of the case cannot be had in the court below, or that some question of law of more than usual difficulty and importance is likely to arise upon the trial, or that a view of the premises in respect whereof any indictment is preferred, or a special jury may be required for the satisfactory trial of the same."

Price now moved for the *certiorari*, and admitted that, if the foregoing section is to be held as applicable to a case of this nature, his affidavit was insufficient. [ERLE, J.—As the indictment was found at the assizes, the only real object gained by the *certiorari* is to be able to move for a new trial.] There may be many other reasons. But for this act, the *certiorari* would have been almost a matter of course; and it has only just been discovered that this act, which was passed for the prevention of assaults upon women, contained a clause of this nature.

ERLE, J.—According to this act, you are not entitled to a *certiorari* unless you bring yourself within the terms of the 4th section. This you do not do, and therefore I am prohibited from granting the writ.

Writ refused.

COURT OF QUEEN'S BENCH.

SITTINGS AFTER HILARY TERM, 1855.

February 7.

REG. v. PETRIE AND OTHERS.

Road—Obstruction—Public User—Acquiescence by owner of fee.

A road had been publicly used from 1829 to 1835, when part of it was inclosed by the defendants. In 1829 the reversion of the fee was assigned to L., by a trustee, as was supposed, of the part of the road inclosed. It was alleged however that, at that time, an infant was owner in fee. A witness was called in whose family the fee was original, and he said that all their property in the place in question was sold between 1827 and 1829. Afterwards, in 1854, the defendant Petrie said he had made himself absolute owner of the part in question, but gave no evidence of his title :

Held, upon these facts, the judge was right in leaving it to the jury to find whether there had been a dedication of the way to the public in 1829 by the owner in fee, whoever he might be.

INDICTMENT for obstructing a road, by building a wall across Rope-street, Rochdale, and excluding the public from the thoroughfare which led into the Whitworth-road and thence into the country.

The case was tried at Liverpool before Crowder, J.—John Walmsley was tenant for life, from 1815 to 1822, of the spot in question where the obstruction took place. George Walmsley, the remainderman in fee, then succeeded him, and, on his marriage in 1822, made a settlement of property, comprising the spot in question, one Entwistle being now the surviving trustee of the settlement. Under the settlement G. Walmsley took a life estate, with power to grant building leases, and to dispose of the property under certain limitations. Under this power G. Walmsley granted a building lease, to the defendant Petrie in 1823 for the term of 999 years, of land abutting on the part of Rope-street where the obstruction took place. Also abutting on this spot there stood before 1835 a cotton factory, Butterworth's, also known as the Stone Factory, being built of stone. In 1835 this factory was burnt down. After this the defendants became the purchasers of Butterworth's premises; and in 1835, being the owners of the

land on both sides this part of Rope-street, they inclosed such part of the street at both ends, and so it remained inclosed until 1854. Up to the time of this inclosure the public had used Rope-street as a way to the Whitworth-road, and so out into the country. And it was a great convenience, particularly to the inhabitants of Rope-street. There was some evidence of an old fence having been across the street, but that had been long broken down, and the way enjoyed without molestation. It was taken at the trial that the spot in question originally belonged to the Walmsleys. And some evidence was given that it had been marked out as a street in the building lease granted by G. Walmsley to Petrie in 1823. The reversion in fee, expectant on the determination of Petrie's lease, was assigned by Entwistle to one Lomax, on the 30th December 1829. At this time the elder son of G. Walmsley, in whom the fee was alleged to be under the marriage settlement, was only four years old. In consequence of the inconvenience caused by the obstruction, particularly to the inhabitants of Rope-street, public meetings were held, and the trustees of the Chetham Hospital, the owners in fee of a great portion of Rope-street, were called upon to interfere on behalf of their lessees. They accordingly corresponded with the defendants on the subject, and the latter offered to give 500*l.* to the hospital if the trustees would decline to prosecute. This offer was declined, and the defendants were compelled to remove the obstruction at one end of the inclosure, but persisted in retaining it at the other end. In 1854 the defendant Petrie wrote to the solicitor of the hospital that he had made himself absolute owner of the spot in question. G. Walmsley was called as a witness, and he stated that they had disposed of all their property in Rope-street, between 1827 and 1829.

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The learned judge, upon these facts, left it to the jury to say whether there was a dedication in 1829 by Lomax or by any other person in whom the fee then was, and declined to ask them to find in whom the fee was in 1829. The jury found that there was a dedication of the road to the public in 1829 by Lomax, or by whoever was the owner. Verdict for the Crown.

A rule *nisi* having been granted for a new trial on the ground of misdirection and of the verdict being against the evidence;

H. Hill, Tomlinson, and Mellish showed cause, and

Wilkins, Serjt., Cowling and T. Jones supported the rule. *Reg. v. The Inhabitants of Eastmark*, 11 Q. B. 877, was cited.

COLERIDGE, J.—I am of opinion that there is no ground for saying that there was any misdirection in the question left to the jury at the trial. The principles laid down in *Reg. v. Eastmark* are perfectly sound and familiar, and the result of them is this: that where there is satisfactory evidence of the user of a road by the public, and the way in which and the time during which that has been enjoyed appear, it is not at all necessary to inquire from whom the dedication to the public first proceeded. Indeed, it must constantly happen that the party who indicts for the obstruc-

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tion of a road is ignorant of all matters of title respecting it, and that all he knows is, that the public have had the use and enjoyment of it for a number of years. Those who seek to rebut the inference arising from such use have the onus cast on them of showing the circumstances which will take the case out of the ordinary rule. The direction, therefore, of the learned judge to the jury in this case would have been a right one under ordinary circumstances. Then what are the circumstances in the case relied on to show that that direction was an improper one? From 1829 to 1835 there was such satisfactory evidence of user of the way by the public as would make it the ordinary case of public user; and the conduct of the defendant Petrie increases the inference arising from such use as against him. In 1823 Petrie's interest commenced under a building lease; that did not include the spot in question. He remained in that situation until 1829, making use of the land outside that spot, and also of the spot in question. In 1835 there was a large fire, and the factory was burnt down, and then his interest in the premises increased, and he interrupts the public user of the way, and shuts it all up at both ends. In 1854 he was obliged to open the way at one end, and he undertook to open it at the other. The circumstances of title relied on to introduce the peculiarity into this case are these: George Walmsley said that the whole of the property was sold between 1827 and 1829. This, it is true, was very slight evidence; but still it showed a possibility that there were parties in existence who could so sell, and that Petrie might have rebutted that statement if untrue. Again, in 1854, Petrie said he had made himself absolute owner of the land now in question, and that he had a title-deed to show this. I do not stop to inquire whether that deed could be evidence; but it is a very fair inference that Petrie would know who the owners of the spot in question were in 1829. Then the case is like that of a man against whom there is slight evidence, and who calls witnesses on his part, but adduces no evidence of title in any one in 1829. This brings the case back to the ordinary case of a public user of a way for a number of years, from which the ordinary inference of dedication by the owner arises.

WIGHTMAN, J.—The enjoyment and use of a way by the public, with circumstances of publicity for five or six years, is, in the first instance, evidence of assent thereto by the owner, whoever he may be. It is not necessary to enter into any inquiry as to title. This is a public right grounded on the enjoyment and use by the public, from which it may be inferred that the owner, whoever he may be, did assent to the enjoyment, and did dedicate the way to the public. But it is said that the prosecutor did give evidence to show that there was an owner at the time of the user. If the case had rested on the evidence of title adduced on the part of the prosecution, which carried it as far as the Walmsleys and no further, there might have been doubt; but the witness said that before 1829 all the property had been parted

with by the Walmsleys, and in whom the title then vested did not appear. One objection to the direction of the learned judge was, that the jury ought to have been told to find in whom the title was. At the time of the dedication to the public, as found by the jury, it did not appear in whom the title was. The owner at the time of the trial is the party interested in rebutting the *prima facie* case; if he can show no acquiescence by the owners at the time of the user, no doubt he may rebut the *prima facie* case. Petrie says he has the title to the spot in question, but he offers no evidence of title. It seems to me, therefore, that it was not necessary on the part of the prosecution to go into that question, and that the case is undistinguishable from *Reg. v. Eastmark*.

ERLE and CROMPTON, J.J. concurred.

Rule discharged.

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COURT OF CRIMINAL APPEAL.

April 28, 1855.

(Before POLLOCK, C. B., PARKE, B., WIGHTMAN, J.,
CROMPTON, J., and CROWDER, J.)

REG. v. THOMAS ARCHER. (a)

False pretences—Credit given to the prisoner instead of his supposed principal.

Upon an indictment for obtaining goods by false pretences it was proved that the prisoner falsely represented himself to the prosecutors as being connected in business with one J. S. of N. whom he stated to be a person of wealth, and by that representation obtained the goods for himself and not for the supposed J. S.

Held, that although the credit was given to the prisoner himself, he was properly convicted.

THE following case was reserved by the Recorder of Leeds:—
The defendant was indicted for a misdemeanor at the Leeds Borough Sessions, holden before the Recorder of that Borough on the 3rd March, 1855.

The indictment contained four counts.

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

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—
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The first count in substance charged the defendant with obtaining from Samuel Hirst, on the 6th day of January last (by falsely pretending to Samuel Hirst that there was one John Smith, who was an ironmonger, and who lived at Newcastle, and that the said John Smith was a person to whom the said Thomas Archer durst trust 1000*l.*, and that the said John Smith went out twice a year to New Orleans to take different kinds of goods to his the said John Smith's sons, and that the defendant then wanted some cotton warp cloths for the said John Smith of Newcastle), one end of cotton warp cloth, of the goods of the said Samuel Hirst, with intent to defraud; whereas in truth and in fact there was not then one John Smith who was an ironmonger, and who lived at Newcastle; and whereas in truth and in fact the said Thomas Archer did not then want the said cotton warp cloth, or any cloth whatever for the said John Smith, as he the said Thomas Archer well knew at the time when he did so falsely pretend as aforesaid.

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The second count in substance charged the defendant with obtaining from the said Samuel Hirst, on the 11th January last (by falsely pretending to the said Samuel Hirst that he the defendant then wanted for the said John Smith, who was an ironmonger, and who lived at Newcastle, four other ends of cotton warp cloths), four ends of cotton warp cloths, of the goods of the said Samuel Hirst with intent to defraud; whereas in truth and in fact the said Thomas Archer did not then want for the said John Smith the said last mentioned four ends of cotton warp cloths, or any cloths whatever, as he the said Thomas Archer well knew at the time when he did so falsely pretend as last aforesaid.

The third count stated that long before, and at the time of committing the offence in that count mentioned, John Holt, a commission agent for the sale of woollen cloths, was well known to the said Samuel Hirst, and did business with the said Samuel Hirst as a commission agent for the said Samuel Hirst, and that the defendant afterwards, to wit, on the 11th day of January last obtained from Benjamin Holt (being servant to John Holt), (by falsely pretending to the said Samuel Hirst, that he the defendant then wanted, for the said John Smith of Newcastle, who was a person worth some thousands of pounds, two ends of black cloths) two ends of black cloths, goods of the said John Holt, with intent to defraud; whereas in truth and in fact the said Thomas Archer did not then want for the said John Smith the said two ends of black cloth or any cloth whatever, as he the said Thomas Archer well knew at the time when he did so falsely pretend as last aforesaid.

The fourth count in substance charged the defendant with obtaining from the said John Holt, on 11th January last (by falsely pretending to the said Samuel Hirst that he the defendant then wanted for the said John Smith of Newcastle two ends of black cloth), two ends of black cloth, goods of the said John Holt with intent to defraud; whereas in truth and in fact the

said Thomas Archer did not then want for the said John Smith of Newcastle the said last mentioned two ends of black cloth or any cloth whatever, as he the said Thomas Archer well knew at the time when he did so falsely pretend as last aforesaid. The defendants pleaded not guilty to all the counts, and issue was joined on the part of the Crown.

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On the trial before the said Recorder, evidence was given sufficient to warrant the conviction of the defendant on every one of the four counts, unless the following objection taken by the counsel for the defendant be valid. The said counsel contended that the evidence showed that Samuel Hirst and John Holt, the two persons named in the indictment as owners of the goods obtained by the defendant, contracted to sell the goods to the defendant, not to the supposed John Smith, and delivered and caused to be delivered to the defendant in pursuance of this contract, the goods for the defendant himself, and not for the supposed John Smith; and the said counsel contended that this being so, the defendant was entitled to an acquittal, although it should appear that such contract and such delivery in pursuance of such contract resulted from the falsehoods told by the defendant as charged in the indictment, and from the belief given to such falsehoods by Samuel Hirst and John Holt. Case.

The jury, in answer to questions put to them by the Recorder, stated, that they were of opinion that the representations were made by the defendant as charged in the indictment, and that Samuel Hirst and John Holt believed such representations, and that such representations were false to the knowledge of the defendant; and Samuel Hirst and John Holt, in consequence of such belief, thinking that the defendant was a person with whom they might safely contract as being connected with the supposed John Smith and employed by him to obtain the goods, did mean to contract with the defendant, and not with the supposed John Smith, and did in pursuance of such contract deliver and cause to be delivered the goods to the defendant for the defendant himself, and not for the supposed John Smith.

The Recorder directed the jury, that upon this finding of the facts they ought to find a verdict of guilty, which they found accordingly.

The defendant was sentenced to be imprisoned and kept to hard labour for nine calendar months; but execution of the judgment was respited, and the defendant not being able to give bail was committed to prison until the question hereinafter mentioned should have been considered. He is still in prison.

The question for the opinion of the Justices of either Bench, and Barons of the Exchequer is, whether the defendant ought to have been convicted under the circumstances above stated.

No counsel was instructed on behalf of the prisoner.

Pickering (for the prosecution).—The only objection made in this case was, that the prosecutor entered into a contract to sell the goods to the prisoner as principal, and not as agent for the

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supposed John Smith; but that makes no difference. The false representations were made by the prisoner, and the prosecutor was induced to deliver the goods to the prisoner by those false representations.

PARKE, B.—If a man only says that he wants the goods for John Smith, does that amount to a false pretence that he is employed by John Smith? It may mean that when he has bought them he intends to send them to John Smith; and then that is no false pretence of any fact as existing at that time; it is a mere promise of something future which is not within the statute. If I say, "I buy this ornament for the Emperor Napoleon," it would not necessarily mean, "I am employed by the Emperor to buy it;" and the meaning of the expressions in such a case would be a question for the jury. They must say whether the representation was of a fact, as that he was employed, or of an intention, as that he meant to send it to a particular person.

Pickering.—The jury have found the prisoner guilty; and the representation in this case, as alleged in the indictment, is this: that the prisoner was engaged in business with a person of wealth.

WIGHTMAN, J.—If a man falsely says, "I am connected with a person of opulence; give me credit on that account," and he thereby obtains money or goods, that is within the statute.

Pickering.—And that is precisely the present case.

POLLOCK, C. B.—We need not trouble you further upon this case, as we are all of opinion that the conviction is right.

Conviction affirmed.

CRIMINAL LAW CASES.

COURT OF CRIMINAL APPEAL.

April 28.

(Before POLLOCK, C. B., WIGHTMAN, J., CROMPTON, J.,
and CROWDER, J.)

REG. v. ELIZABETH CHANDLER. (a)

Neglect to provide infant with necessary food—Averment that the mother had the means of doing so—Evidence.

An indictment for neglecting to provide an infant with sufficient food alleged that the prisoner, who was the mother of the child, had the means of doing so. There was no evidence that she actually had the means of doing so; but it was proved that she might have obtained relief by applying to the relieving officer.

Held, that this evidence did not prove the indictment, and that the conviction was wrong.

THE following case was reserved by Mr. Bramwell:—At the Assizes and General Sessions of Gaol Delivery holden at Maidstone, on the 13th day of March last, Elizabeth Chandler was tried and found guilty upon an indictment in the following form:

“KENT.—The jurors for our Lady the Queen, upon their oath present that during the time hereinafter in this indictment mentioned, one Elizabeth Chandler was a single woman, and was the mother of a certain male child known by the name of Albert, of very tender age, and wholly unable, by reason of his tender age, to provide himself with food or nourishment or to take care of himself, and that during all the time aforesaid it was the duty of the said Elizabeth Chandler to protect, shelter and nourish the said child, and provide for and give and administer to the said child suitable food in proper and sufficient quantities for the nourishment and support of his body and the preservation of his health, she the said Elizabeth Chandler during all the time aforesaid being able and having the means to perform and fulfil her said duty; and the jurors aforesaid upon their oath aforesaid, do further present that the said Elizabeth Chandler, late of the parish of Speldhurst, in the county of Kent, well knowing the premises, and not regarding her duty in that behalf, but being a person of unfeeling and inhuman disposition, on the 1st day of

(a) Reported by A. BITTLESTON, Esq., Barrister-at Law.

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*Neglect to
provide infant
with food—
Evidence of
means.*

October, in the year of our Lord 1855, at the parish aforesaid, in the county aforesaid, did unlawfully, wilfully and on purpose, give to the said child food and nourishment in quantities wholly inadequate and insufficient for the support and preservation of the body and health of the said child, and did unlawfully and wilfully omit, neglect and refuse to provide for and to give to the said child, meat, drink or food in any sufficient or proper quantity whatsoever. Whereby and by reason of the premises last aforesaid, the life of the said child was endangered, and the said child became and was sick, ill, weak, starved and greatly emaciated in his body; to the great damage of the said child, and against the peace of our said Lady the Queen, her crown and dignity.

The first count was duly proved, except as to the allegation: "She the said Elizabeth Chandler during all the time aforesaid being able and having the means to perform and fulfil the said duty." As to that allegation the evidence was, that the child was a bastard child of the prisoner, and that she was cohabiting with a man to whom she was not married, and who was not the father of the child. There was no evidence of her actual possession of means of nourishing and maintaining the child as stated in the first count of the indictment, but it was proved that she could have applied to the relieving officer of the Poor Law Union in which she resided; that had she done so she would have been entitled to, and received relief for herself and the child adequate to their due support and maintenance, and that she had not made any such application; and it was contended by the counsel for the prosecution that this evidence satisfied the allegation above referred to. Entertaining doubts on this subject, and the validity of the first count in point of law being questioned, I have to request the judgment of the Court for the consideration of Crown Cases Reserved on these two points. Judgment on the said indictment stands respited, and the defendant was admitted to bail to receive judgment at the assizes next to be holden for the said county.

Case.

The case was not argued by counsel.

Judgment.

POLLOCK, C.B.—In this case no evidence was given that the prisoner had the means of providing sufficient food for her child, but it was said that she was bound to apply to the relieving officer and would have had relief if she had. That may be so, but it does not prove the indictment, which alleges that she having the means, neglected to supply the child with sufficient food. It is admitted in the case that there was no evidence of her having the means; that being admitted, it is no answer to say that she might have procured the means by applying to the relieving officer. We are all of opinion that the conviction cannot be supported. The evidence does not fit the indictment.

PARKE, B.—It does not appear she had the means, though by possibility she might have obtained them. She had them not in fact, and whether she could obtain them is doubtful.

WIGHTMAN, J., CROMPTON, J. and CROWDER, J. concurred.
Conviction reversed.

COURT OF CRIMINAL APPEAL.

April 28, 1855.(Before POLLOCK, C. B., PARKE, B., WIGHTMAN, J.,
CROMPTON, J., and CROWDER, J.)

REG. v. FORSTER. (a)

*Uttering counterfeit coin—Evidence of guilty knowledge—Subsequent uttering of base coin of a different denomination—Improper reception of evidence.**Upon a charge of uttering counterfeit coin, in order to prove guilty knowledge evidence is admissible of the subsequent uttering by the prisoner of counterfeit coin of a different denomination.**The improper reception of evidence upon a criminal trial is not necessarily a ground for quashing the conviction, if the other evidence adduced be amply sufficient to sustain it.***T**HE following case was reserved by Parke, B.:—

The prisoner was indicted at the last Liverpool Assizes for having (after a previous conviction for uttering counterfeit coin) uttered a counterfeit crownpiece at Manchester, on the 12th December, 1854, to Jane Anne Needham, knowing it to be counterfeit.

The uttering a counterfeit crown on that day by the prisoner to Jane Anne Needham was proved.

To prove guilty knowledge, the uttering of another crownpiece by the prisoner at Manchester on the 11th December, 1854, was proved.

The prisoner on that occasion, on its being stated to her to be a bad crownpiece by the shopkeeper to whom it was given by her, said, she would bring her husband and daughter to show where she got it, and was permitted to depart on her promise to bring them, but she never returned.

In order further to prove guilty knowledge on the part of the prisoner, the prosecutor offered to give evidence of a subsequent uttering by the prisoner of a counterfeit shilling on the 4th January.

The counsel for the prisoner objected that a subsequent uttering of a different species of counterfeit coin was not admissible to show guilty knowledge at a prior time. I had some doubt as to the propriety of receiving the evidence, and intimated that I

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

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FORSTER.

1855.

*Uttering base
coin—Guilty
knowledge
—Subsequent
uttering.*

should reserve the point for the consideration of the Judges if the evidence should be received and the prisoner convicted; and considering the proof in the case, besides that of the subsequent uttering, I thought the evidence would have been withdrawn. But on the part of the Crown it was thought very desirable to have the point settled, as the case was of frequent occurrence in practice, and considerable doubt was entertained upon it, and therefore I reserved it.

The jury found the prisoner guilty, and voluntarily added that they found the verdict without considering the evidence of the subsequent uttering in the least.

The prisoner was sentenced to four years' penal servitude.

I pray the advice of the judges: (see 1 Phill. Evid. 510; Taylor, 250; Rosc. Crim. Evid. 85.)

This case was not argued by counsel.

PARKE, B.—I reserved this case in consequence of an intimation that the point is one of frequent occurrence, and one which the authorities of the Mint desire to have settled, and I have referred to several cases of forgery, where the objection has been allowed, unless the instruments were of the same description; (b) but after the declaration of the jury that the evidence objected to had not influenced their verdict, the court is not bound to consider the case, there being other evidence amply sufficient to sustain the conviction: (Russ. & Ry. 132.) The rule in that respect is different in criminal and civil cases.

POLLOCK, C. B.—I, however, think that the evidence was admissible. The value of it is another matter. It seems to be conceded that the subsequent uttering of another crownpiece would have been clearly admissible; and it seems to me that the difference in the description of bad money uttered by the prisoner at different times is a circumstance which can only go to the effect of the evidence, not to its admissibility. Evidence of some other dishonest act of a different kind of course would not do; but the uttering of base coin, though coin of a different denomination, is sufficiently connected with the offence charged to render the evidence admissible.

The other judges concurring,

Conviction affirmed.

(b) In *Taverner's case* (4 Car. & P. 413, n.) Lord Ellenborough, C.J., Thompson, C.B., and Lawrence J., held that upon an indictment for uttering a forged bank note, evidence of the subsequent uttering of another forged note was inadmissible to prove guilty knowledge, unless the latter uttering was in some way connected with the uttering which was the subject of the indictment, as by shewing that the notes were of the same manufacture. In *Smith's case*, *ib.* 411, evidence was tendered of the subsequent uttering of forged bills of exchange precisely similar to the one which was the subject of indictment, and Mr. Justice Gazelee, after consulting Alexander, C.B., was disposed to receive it; but upon an intimation that he should reserve the point, the evidence was withdrawn.

HOME CIRCUIT.

HERTFORD SPRING ASSIZES, 1855.

March 28.

(Before Mr. BARON PLATT.)

REG. v. WINCH AND CHAPLIN. (a)

Ownership of goods—Amendment—Record.

An indictment alleged that A. feloniously stole the goods of R. and another, and that B. feloniously received the goods so as aforesaid stolen; there was also a count against B. for the substantive felony of receiving the said goods. A. pleaded guilty on the trial of B.; there was no proof of the ownership of the goods as alleged in the indictment.

Quære, whether the first count against B. could, notwithstanding A. had pleaded guilty to the indictment as it stood, be amended by alleging the ownership to be in persons unknown.

Such an amendment was ordered with respect to the count for a substantive felony against B.

THE prisoner Winch was indicted for stealing certain goods the property of Edward Robinson and others, and Chaplin was charged in the same indictment with feloniously receiving the goods aforesaid, so as aforesaid stolen. There was also a count against Chaplin for the substantive felony of receiving the aforesaid goods.

On being arraigned Winch pleaded guilty, and Chaplin not guilty.

On the trial of Chaplin the stealing by Winch and the felonious receiving by Chaplin were clearly made out, but the prosecutor not appearing, there was no evidence of the names of the owners of the property as laid in the indictment. It was then suggested that the indictment might be amended by alleging the ownership of the property to be in certain persons to the jurors unknown, but Mr. Straight, the deputy clerk of the arraigns, pointed out the difficulty that might arise with respect to the plea of guilty already entered; since, Winch had confessed

(a) Reported by B. C. ROBINSON, Esq., Barrister-at-Law.

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to stealing the goods of Edward Robinson and others, but not those of persons unknown; so that to alter the record to convict Chaplin would be to falsify the record with respect to Winch. Formerly, all the facts might have been set out upon the record according to the truth, as, that Winch had confessed to stealing the goods of Edward Robinson and others; the subsequent trial of Chaplin and the amendment it was found necessary to make upon the trial, but the 3rd section of 14 & 15 Vict. c. 100, prevents the whole proceedings from appearing upon the record. It enacts that, "If it shall become necessary at any time for any purpose whatsoever, to draw up a formal record in any case where any amendment shall have been made under the provisions of that act, such record shall be drawn up in the form in which the indictment was, after such amendment was made, without taking any notice of the fact of such amendment having been made."

Eventually, PLATT, B., directed the record to be amended as far as respected the count for a subsequent felony, by changing the allegation of ownership to that of a person unknown, the verdict of guilty being subsequently entered upon that count, and Mr. Straight indorsed the following memorandum upon the record:—"A variance appearing between a statement in the last count, and the evidence offered in support thereof, namely, that the goods therein mentioned were, at the time of the felony therein mentioned, the goods of Edward Robinson and others: It is ordered that the indictment be amended according to the proof, and it was therefore amended accordingly in the form at present appearing."

CENTRAL CRIMINAL COURT.

APRIL SESSION, 1855.

April 11.

(Before Mr. JUSTICE ERLE.)

REG. v. JACKSON AND CRACHNELL. (a)

Evidence—Calling party to the record.

Where two prisoners are indicted together, and one of them having pleaded guilty, the other is desirous of calling him as a witness on his behalf, Semble, that the proper course is to pass sentence upon him before he is examined.

THE prisoners were indicted for feloniously uttering a forged 10*l.* note, with intent to defraud. Jackson pleaded guilty, Crachnell pleaded not guilty.

Sleigh (for the prisoner Crachnell) proposed to call Jackson as a witness on behalf of his client.

ERLE, J.—Has this course ever been adopted before?

Sleigh said he was not aware of any case upon the precise point, (b) but it was very common to call a prisoner, who had pleaded guilty, on behalf of the prosecution, and he submitted that if the principle was right in the one case it was so in the other.

ERLE, J.—I have still some doubt in my mind on the subject. Whenever it has been found necessary to examine a prisoner, as is now proposed, I have always either directed an acquittal, or, the jury having convicted, I have passed sentence, and so put an end to the whole matter with respect to him before I have allowed him to give evidence; and I think this is the proper course. At all events, I shall pursue it in this instance.

There being a previous conviction in the indictment against Jackson, to which he had pleaded not guilty, he was now given in charge to the jury, and evidence of a former conviction having

(a) Reported by B. C. ROBINSON, Esq., Barrister-at-Law.

(b) See *R. v. Stewart*, 1 Cox Crim. Cas. 174; and *R. v. Archer*, 3 id. 228.

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been adduced, he was found guilty. He was then called up for judgment, and sentenced to fifteen years' transportation.

Sleigh was then allowed to call Jackson as a witness on behalf of Crachnell, who was

Acquitted.

Bodkin and *Bayley* for the prosecution.

Sleigh for the prisoner.

COURT OF CRIMINAL APPEAL.

April 28, 1855.

(Before POLLOCK, C.B., PARKE, B., WIGHTMAN, J., and CROWDER, J.)

REG. v. FROST AND ANOTHER. (a)

Indictment—Description—Amendment—14 & 15 Vict. c. 100, s. 24.

In an indictment for an assault upon the gamekeeper of the Duke of Cambridge, his Royal Highness was described as George William Frederick Charles Duke of Cambridge. The only witness to prove the averment deposed that "George William" were two of the names of the Duke, and that he believed the Duke had other christian names, but he could not say what they were.

Held, that the court below were right upon that evidence in not striking out the names Frederick Charles only, but that they would have been justified, under 14 & 15 Vict. c. 100, s. 24, in striking out all four names, leaving the title of the Duke of Cambridge to stand alone.

THE following case was sent to the Court of Criminal Appeal by the Justices of the Surrey Sessions:—

At the General Quarter Sessions of the peace of our Lady the Queen, holden at Saint Mary, Newington, in and for the county of Surrey, on Tuesday, the 2nd day of January, in the year of our Lord, 1855, William Frost and John Russell were tried and convicted of an assault upon a gamekeeper, under the following indictment:—

"SURREY—The jurors for our Lady the Queen upon their oath present that at the time of the committing of the assault hereinafter mentioned, to wit, on the ninth day of December, in

(a) Reported by B. C. ROBINSON, Esq., Barrister-at-Law.

the year of our Lord, 1854, in the night time, to wit, about the hour of twelve in the night of the same day, William Frost and John Russell were unlawfully upon certain land in the occupation of one George William Frederick Charles Duke of Cambridge, situate at the parish of Kingston-upon-Thames, in the county of Surrey, armed with a gun and with certain bludgeons and sticks, and other offensive weapons, for the purpose of then and by night as aforesaid, unlawfully taking and destroying game, and that the said William Frost and John Russell were then so being upon the said land by night as aforesaid, armed with the said gun, bludgeons and sticks and other offensive weapons for the purpose aforesaid, by one Henry Edson, the servant of the said George William Frederick Charles Duke of Cambridge, the said Henry Edson then having lawful authority to seize and apprehend the said William Frost and John Russell found, and that he the said Henry Edson being then about to seize and apprehend the said William Frost and John Russell for the offence aforesaid, the said Henry Edson then having lawful authority so to do, they the said William Frost and John Russell with the gun aforesaid, and with the bludgeons and sticks and other offensive weapons aforesaid, which they the said William Frost and John Russell in their hands then held, did then unlawfully assault and beat the said Henry Edson; against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity."

At the trial none of the witnesses were able to prove the christian names of the Duke of Cambridge as laid in the indictment, and found by the grand jury. One witness only swore that George William were two of the christian names of the said Duke, that he believed the said Duke had some other christian names, but he could not say what they were.

Upon this it was moved by the counsel for the prisoners, upon the authority of *Reg. v. Earl of Cardigan*, that as the christian names of the Duke of Cambridge had not been proved as laid in the indictment, the court should direct an acquittal of the prisoners.

On the other hand it was moved by the counsel for the prosecution, that the court should amend the indictment under statute 14 & 15 Vict. c. 100, by striking out the words "Frederick Charles."

The court refused to amend the indictment because no sufficient evidence was offered to enable it to so, and the court also refused to direct an acquittal, but left it to the jury to say whether they were satisfied by the evidence of the identity of the said Duke of Cambridge as occupier of the land in question, and as master of the said Henry Edson, in which event the jury would consider the case upon its merits generally, and give their verdict accordingly.

The jury thereupon, after a short consultation, brought in a verdict of guilty generally against both prisoners, alleging at the same time, that they were satisfied with the evidence of the identity of the said Duke.

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The court reserved the following two points for the consideration of the Justices of either Bench and Barons of the Exchequer :— First, Whether it was bound to amend the indictment upon the insufficient evidence above mentioned, by striking out the two Christian names of the said Duke of Cambridge, viz. Frederick and Charles, which had been found by the grand jury, and respecting which no evidence whatever was given at the trial. And secondly, Whether, having refused to amend, the court acted properly in submitting the case to the jury in the manner above mentioned.

The court postponed the judgment, and committed the said William Frost and John Russell to prison until such questions shall have been considered and decided.

Charnock (for the prisoners) having quoted the Earl of Cardigan's case, which he contended was precisely in point, was stopped by the court.

Robinson, B. C. (for the prosecution) said, that that case was decided before the passing of the 14 & 15 Vict. c. 100. By the 24th section of that act it was declared that no indictment should be held insufficient, for that any person mentioned in the indictment is designated by a name of office or other descriptive appellation. The court below would therefore have been clearly justified in striking out all the names, leaving merely the words, the "Duke of Cambridge"; but even as the indictment stood there was still the descriptive appellation, and the rest of the names were mere surplusage. In *R. v. Graham* (2 Leach, 547) the prosecutor was described as James Hamilton, Esq., commonly called Earl of Clanbrassil, in the kingdom of Ireland, and it was held that the latter words "commonly called Earl of Clanbrassil," &c., might be treated as surplusage. So in *R. v. Sull* (2 Leach, 861) the prisoner was indicted for stealing property belonging to Victory Baroness Turkheim. It appeared the prosecutrix's real name was Selina Victoire, but that she was usually called by her foreign title of Baroness Turkheim, and the court held that she was properly described. In that case the name in the indictment was not the true name, nor was it a name gained by reputation. The same remark applied to *R. v. Elliot* (8 C. & P. 772); there Lord Segrave was described as the Right Honourable William Fitzhardinge Lord Segrave, and Mr. Justice Erskine held the description sufficient, although the proper designation was William Baron Segrave, and there was nothing to show that the other was gained by reputation.

The question here was properly left to the jury, whether the person mentioned in the indictment was the same as the evidence referred to. Substantially that was the decision in *R. v. Davis* (2 Den. C. C. 231), where the prosecutor being described as Darius Christopher, his real name being Tryus, the court said it should have been left to the jury to say whether the two names were *idem sonantia*. The stringency required in these cases was in order that persons accused might be enabled to plead *autrefois*

acquit and *autrefois* convict; but after the way in which the question was left to the jury in this case, there could be no difficulty in establishing such a plea. At the trial abundant evidence was given that the Duke of Cambridge had acquired the names of George William by reputation, whatever other names he might have, and therefore it was that the court was asked to strike out the other two names, but such evidence being omitted it could scarcely be contended that as the case stood they would have been justified in striking out the two last names.

Another question might arise whether the court had not now power to amend where the point had been raised at the trial; at all events, such a course was pursued in *R. v. Sturge*, 23 L. J. 172, M. C., which was a road indictment, and an amendment was made in the description of the highway.

PARKE, B.—That was done by consent.

Robinson submitted that in criminal cases no additional power could be given to the court by assent of the accused.

POLLOCK, C.B.—We are all of opinion that in this case the prisoners must be discharged, the conviction being wrong. It is a general rule that whatever is averred as matter of description must be proved. The Duke of Cambridge was described as having four names, and no one was able to prove that those names belonged to his Royal Highness. The *Earl of Cardigan's* case is precisely in point, and therefore the names not having been proved, the question proposed to us is, whether the court below was bound to amend by striking out two of them. We think the court ought not to have amended without striking out all four.

PARKE, B.—I am entirely of the same opinion as my lord. It seems that under the sect. 24, of the 14 & 15 Vict. c. 100, the titles of the Duke of Cambridge would have been sufficient as a descriptive appellation, and the justices might therefore have struck out every other description. It is useless asking us now whether they ought to have amended in the way the case suggests. They are not bound to amend in any case, and if they refuse to do so, we have no power to do so after the verdict. *R. v. Sturge* is an exceptional case. It was agreed at the trial that the amendment should be made, if required, and authorized, and that agreement was acted upon.

The rest of the court concurred.

Conviction quashed.

B. C. Robinson for the prosecution.

Charnock for the prisoners.

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CENTRAL CRIMINAL COURT.

MAY SESSION, 1855.

May 8.

(Before Mr. JUSTICE CRESSWELL.)

REG. v. FREWIN. (a)

Confession—Indictment—Person having authority.

Semble, where a confession is induced by the promise of a person not, in fact, having authority or power with respect to the prosecution to show any favour to the accused, such confession is admissible, although the prisoner from his knowledge of the position of the promiser may reasonably suppose he has such authority.

THE prisoner was indicted for unlawfully placing a piece of iron upon the rails of the London and South Western Railway.

A witness, who was in the service of the company as a plate-layer, was called on the part of the prosecution to prove a statement made to him by the prisoner.

CRESSWELL, J. (there being no counsel for the prisoner), having interrogated the witness as to whether he had held out any inducement to the prisoner to confess, he said that he first asked the prisoner how he came to put the iron upon the rail, at first, the latter denied it; the witness then told him he had better tell the truth, it would be a good deal better for him if he owned to it. The witness stated that he was not employed by any of his superiors to see the prisoner, but the latter knew he worked upon the line.

CRESSWELL, J.—I am disposed to think the statement of the prisoner is receivable, notwithstanding the observations made to him by the witness, he not being a person having any authority to make any promise; still, he was in a position that might reasonably lead the prisoner to suppose that he had.

Ballantine (for the prosecution) said that, after such an observation from his lordship, he should decline to pursue the examination of the witness further.

Ballantine for the prosecution.

COURT OF CRIMINAL APPEAL.

April 28, 1855.(Before POLLOCK, C.B., PARKE, B., WIGHTMAN, CROMPTON,
and CROWDER, JJ.)

REG. v. JANE PERRY. (a)

*Concealment of birth—Temporary disposal of the body.**In order to complete the offence of endeavouring to conceal the birth of a child by secretly disposing of the dead body, under s. 14 of 9 Geo. 4, c. 31, it is not necessary that the body should be placed in any final place of deposit.**And where the mother, with the intention of concealing the body from a surgeon, placed it under a bolster, upon which she laid her head.**Held (POLLOCK, C.B., dissentiente), that she was properly convicted under the above section; though it was assumed that she meant to remove it elsewhere when an opportunity occurred.***T**HE following case was reserved by MARTIN, B. :—

Jane Perry was indicted for the murder of her bastard child. There was no evidence of the murder, but it was proved by a surgeon that he was sent for by the members of the family where the prisoner lived as servant, in consequence of her illness; that upon seeing her he suspected she had just given birth to a child, and examined her person and found she had been recently delivered, and asked her several questions on the subject, but could get no satisfactory answer. He then went out of the room, leaving the prisoner alone lying on the bed. He immediately heard the door being locked, and returned to it and insisted upon its being opened, which the prisoner did and was returning to the bed as the surgeon entered. When he arrived at the bed-side she laid down her

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

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head upon the bolster, and was pulling the bed clothes over her person; he then found the dead body of the child under the bolster, with her head partly over it; he asked her where the child had been before, but could get no answer. The question I desire to be answered by the court is, whether, assuming that the prisoner placed the dead body of the child under the bolster with the intention of endeavouring, as far as she could, to conceal the body from the surgeon, it was such a disposing of the dead body as to be an offence within the 9 Geo. 4, c. 31, s. 14? It may be assumed that she intended to remove the body to some other place when an opportunity offered. If the court thinks it was not an offence, they will please order the prisoner to be discharged, as I respited her sentence until the opinion of the court was obtained.

This case was not argued by counsel, but the judges retired to consider the case, and upon their return delivered the following

JUDGMENT.

PARKE, B.—Upon this case the Lord Chief Baron differs from the other members of the court. He thinks that there was not such a disposition of the dead body of the child as is within the statute; but we are all of a different opinion. It has already been solemnly decided, and that decision has been since acted upon in two or three cases, that the statute by the terms “secret burying or otherwise disposing of the dead body,” does not require that the secret disposal of the dead body should be in some place of final deposit. In this case it is clear that the body was not put in a final place of deposit, and that there was no secret burying of the body; and the only question is, whether there was not a secret disposing of it within the statute. In *R. v. Goldthorpe* (2 Moo. C. C. 244; Car. & M. 335) it was held, that placing the body between a bed and a mattress was a disposing of it within the statute, and we can see no substantial difference between that case and the present, if the object of the prisoner was to conceal the dead body, and prevent inquiry into the birth. Here it is found that she placed the dead body of the child under the bolster, with the intention of endeavouring, as far as she could, to conceal it from the surgeon, and we think that enough.

WIGHTMAN, J.—I am of the same opinion. According to the decision in *R. v. Goldthorpe*, a mere temporary disposing of the body with a view to conceal the birth is sufficient: and upon the facts stated here, making the assumption which the case requires, it is impossible to doubt, that the prisoner disposed of the body, as far as she could at the moment, for the purpose of concealing the fact of the birth from the surgeon.

CROMPTON, J., concurred.

CROWDER, J.—The case of *R. v. Goldthorpe*, is a solemn decision upon the point as to a temporary disposal of the body, and there are two other cases to the same effect, one before

Patteson, J., *R. v. Farnham* (1 Cox C. C. 349), (a) and the other before Lord Campbell, C. J., *R. v. Hughes* (4 Cox C. C. 447.) (b) I think, therefore, it is now too late to contend that the words of the statute should be construed as requiring some final disposing of the body.

Conviction affirmed.

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and CROWDER, JJ.)

REG. v. JAMES M'KAY KEITH. (c)

Engraving part of Scotch bank note without authority—Meaning of words "purporting to be part"—stat. 1 Will. 4, c. 66, s. 18.

Upon an indictment under 1 Will. 4, c. 66, s. 18, charging the prisoner with having engraved on a certain plate a certain part of a promissory note of a particular banking company, purporting to be part of the promissory note of the said company, the evidence was that he had engraved only the royal arms of Scotland, and the figure of Britannia, in the position in which they appear upon a genuine note of the company.

Held that this was enough to satisfy the words of the statute, the jury having found the fraudulent intention, and that, in fact, upon comparison of the engraving with the same parts of the genuine note, it did purport to be part of the note.

THE following case was reserved by COLERIDGE, J.:—

The prisoner was tried before me at the last Warwick Assizes on an indictment framed upon the 11 Geo. 4 and 1 Will. 4, c. 66, s. 18. Upon the facts submitted to the jury he was, subject

(a) In that case Patteson, J., said:—"I have spoken to Mr. Baron Parke, and he informs me that all the cases on this subject were considered in *R. v. Goldthorpe*, and that the judges then present by their decision of that case meant expressly to overrule them, and to hold that any concealment of the body, whether intended to be final or temporary, was within the spirit of the act. I must say that I entirely assent to that position, for it is the common sense view of the matter."

(b) *R. v. Hughes*, Lord Campbell said:—"There cannot be any reasonable doubt that the prisoner visited the outhouse after the child was dead, and although she did not remove it, any replacing of the clothes or other things by which the body was concealed from view, would, I think, be an endeavour to conceal by a secret disposal of the dead body within the statute."

(c) Reported by A. BRITTON, Esq., Barrister-at-law.

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to the following question, rightly convicted. I passed sentence on him; but having doubts whether on one point the charge could be sustained, I reserved that question for the opinion of the judges.

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"Purporting."

The prisoner being possessed of a one pound note of the British Linen Banking Company had cut out the centre part, on which the whole of the promissory note was written, and taken the ornamental border to Kynaston, a printer at Birmingham, representing that he wanted to have a plate made of this border, intending to fill up the centre with the title of some oil or cosmetic, of which the firm in whose employ he represented himself to be were the vendors. Kynaston was not an engraver, and told him that he (Kynaston) must employ another hand to execute the Royal Arms of Scotland and the Britannia, which formed part of this border, to which the prisoner assented. Accordingly, an engraver of the name of Umfreville was applied to, who perceived at once the prisoner's real purpose, and having caused through the police a communication to be made to the Banking Company, undertook the work with their authority and made a plate, an impression from which I annex to this case, which was delivered to the prisoner, and he was apprehended with it in his possession.

The words of the section are as follows:—"If any person shall engrave, or in anywise make upon any plate whatever, any bill of exchange or promissory note for the payment of money, or any part of any bill of exchange or promissory note for the payment of money, purporting to be the bill or note or part of the bill or note of any person or persons, body corporate, or company carrying on the business of bankers (other than and except the Bank of England), without the authority of such person or persons, or body corporate or company," &c.

I doubted whether a plate having on it merely the Royal Arms of Scotland and the Britannia, although placed as they are found in a complete promissory note of the Banking Company, satisfied these words, and request the opinion of the judges thereon.

No counsel appeared for the prisoner.

Bittleston for the prosecution.—This conviction is right. The only doubt entertained by the learned judge at the trial was whether the averment that the part of the note which the prisoner had engraved purported to be part of a note of the British Linen Company was proved; and it is submitted that the evidence on that subject was sufficient to support the finding of the jury. In order to constitute an offence under the section in question, it is not necessary that the part engraved by the prisoner should be so much of the note as will show upon the face of it that it is part of the note of the particular Banking Company. If that were so, nearly the whole of the note must be engraved before the offence would be complete. It is enough if it is a part so engraved as to be capable of completion, and such that if completed, the whole would purport

to be a note of the company to any person acquainted with their notes, or having the opportunity of comparison. The matter was very much discussed in *Reg. v. Faderman*, 4 Cox C. C. 359. There the indictment was framed upon section 19 of the same statute, 1 Will. 4, c. 66, and it charged the engraving of "several parts of an undertaking for payment of money purporting respectively to be parts of one of the foreign undertakings for payment of money" of the Empire of Russia; and *fac similes* of these several parts were engraved upon the indictment; one of them consisted of a scroll and wreath, with words within the border; and the indictment was demurred to for this (amongst other reasons), that the undertaking itself, of which the matters engraved were alleged to be part, was not set out, nor any translation of it, so that the court might be enabled to see on the face of the record whether the parts set out did purport to be parts of the genuine instrument. That demurrer was argued before Alderson, B., Cresswell, J., and Williams, J., and they overruled the demurrer. In delivering judgment, ALDERSON, B., said: "It will be in the first place desirable to ascertain what is the meaning of the words 'purporting to be a bill or part of a bill?' and it appears to us that we must construe it in this way: If it be a complete bill or note, then it must appear on the face of it to be what it is alleged it purports to be; but that word, when it is used with reference to part of a bill or note, cannot be construed in the same manner, for part of a bill cannot purport to be anything; when applied to a part, it must mean that it is part of a bill or note, which, if complete, would purport to be what is described in the act. This is the only reasonable construction that can be put upon the statute. When a prisoner is charged with forging part of an instrument, we must be satisfied not from merely looking at the indictment, but by proper averments and by extrinsic proof, that the instrument, when complete, would be what it is stated to be." And in the course of the argument ALDERSON, B., put this very case: "How under any circumstances could we tell without extrinsic evidence, whether it is part of a foreign note or not? The case of *R. v. Goldstein* (Russ. & Ry. 473), and the other cases cited, were those in which complete instruments were forged. Take the case of the forgery of the figure of Britannia on an engraved plate, how could it be made to appear on the face of the indictment without evidence that it was part of a genuine note? It must be proved by witnesses, and the jury must find it."

In the present case the manager of the bank produced a genuine note, and the jury compared that with the engraving, and found that it purported to be part. The prisoner's defence was that he had copied the designs from the note, but for an innocent purpose; which was, however, negatived by the jury.

CROMPTON, J.—Can the figure of Britannia be said to be part of the note?

Bittleston.—It is part of the *indicia* of the note; one of the

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marks by which the note is known and obtains currency. If these could be engraved with impunity, one of the greatest difficulties in the way of making forged notes would be removed.

JUDGMENT.

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POLLOCK, C. B.—We are all of opinion that this conviction is quite right. (His Lordship read the words of the section.) Now, picking out the words applicable to this case, they run thus—that, if any person shall engrave, or in anywise make upon any plate whatever any part of any bill of exchange or promissory note for the payment of money purporting to be part of the bill or note of any company carrying on the business of bankers, &c., he shall be guilty of the offence. Now the prisoner in this case had procured to be engraved upon a plate only the arms of Scotland, which appear at the head of a genuine promissory note of the British Linen Banking Company, and the figure of Britannia, which is in the margin on the left hand side of the company's genuine note; and the question is, whether he is guilty of the offence described in this statute. I am of opinion that he is. It has been suggested that these pictures do not form any part of the note; and if the word "note" is to be taken as applying only to that which gives the legal obligation to the instrument, they certainly are not part of the note, because they are not part of the formal words expressing the obligation. But I think the statute uses the word "note" in its popular sense, meaning the thing as it is in fact; and, as I threw out in the course of the argument, it seems to me that if it were made an offence to deface or tear a promissory note of a banking company, that offence would be committed by tearing or defacing any part of the piece of paper on which the note is printed—I should say even the blank part—not even containing any of the ornaments or indicia whereby the note is ordinarily known. Then the next question is, does it purport to be part? If the engraving had been put upon an invoice or the back of a card, and so engraved that it could never be used as part of a note, it would not purport to be so; but, if that is not the case, then it must be ascertained by comparison with the genuine note; and upon the comparison it would be a question for the jury, whether it did purport to be part; and in this case the jury must be considered to have found that; and I think they have rightly so found. In another part of the same section, there is a provision against any imitation of the subscription to the note; the words are "resembling, or apparently intended to resemble," as to which it is clear that the apparent or intended resemblance can only be ascertained by comparison; and if it may be done for the one purpose, there is no reason why it should not be done for the other. Does this engraving then purport to be part of a note of the British Linen Company? Giving to the term "note" its proper signification, I think clearly it does. Having reference to the position in which the arms of Scotland and the Britannia are engraved upon the plate, no person looking at that plate and comparing it with a

genuine note, could entertain any doubt that the engraving purported to be part of the genuine note.

PARKE, B.—I am of the same opinion. The object of the statute is to prevent the engraving upon plates of bank notes or parts of bank notes, which may be used for the purpose of forgery; and having reference to this object, it appears to me that everything must be deemed to be part of a note, which helps to give it currency as a note of the particular banking company, and not the mere words of obligation, which shew what the nature of the instrument is. If we were to hold otherwise, we should certainly give great facilities for forgery. The next question is, whether, to bring a case within the statute, the part engraved must purport upon the face of it to be part of a genuine bank note; and I think that that could not have been intended; because, in almost all cases, if you looked only at the part engraved, you would not be able to discover that it was part of a bank note. The indictment must certainly describe the part engraved as purporting to be part of the note of a particular banking company; but if it were necessary, in proving that allegation, to show that the part engraved, looked at by itself and without comparison with a genuine note, would appear to be part of the note, no case could be brought within the statute, unless very nearly the whole of the genuine note was imitated. A person might engrave very nearly the whole of a note without being liable to punishment under this statute, and the very object of it would be thereby defeated. In the latter part of the same clause, there is a provision of a similar kind, in which, however, the word "purporting" is not used; but it is made an offence to engrave any words "resembling or apparently intended to resemble, any subscription" to a promissory note; and the question under that part of the clause would be, whether the words engraved were apparently intended to resemble the genuine signature. How could that be ascertained? Only by comparing it with the genuine signature. In like manner, when the question is, whether the thing engraved purports to be part of a genuine promissory note, you must compare it with the genuine note to ascertain whether it does purport to be part or not. And I think the case is within the statute, if upon such comparison the forged engraving does appear to be an imitation of any part of the note, whether the obligatory part or not. To give the forged note currency at all, it must have upon it, not merely the obligatory words, but also the usual ornaments which appear upon the face of a genuine note; and if there is such a portion of the note engraved, as when compared with the genuine note, will clearly appear to be an imitation and to purport to be part of it, then I think the offence is made out. If only a single dot or line had been engraved, that would probably not be sufficient to satisfy the jury that even upon a comparison it purported to be part of the note; but, in the present case, the royal arms of Scotland and the figure of Britannia, placed in the same position in which they are found in a genuine note, appear without doubt

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upon comparison to be imitations of the ornaments on a genuine note, and purport to be part of such note.

COLERIDGE, J.—After a good deal of doubt, I have now come to a clear opinion that this conviction is right. The question is of a twofold nature—first, what is the meaning of the word “purport;” secondly, how are we to arrive at the conclusion whether any instrument purports to be another. Now, an instrument can only purport to be that which it more or less accurately resembles; and that resemblance must be on the face of the instrument. A person may intend to make an instrument resembling another; but may execute it so imperfectly as to fail in carrying out his intention. The definition of the term “purporting” is the same, whether it is applied to the whole or to part of an instrument. When produced, the whole instrument or the part of it must bear upon the face of it some resemblance to the thing intended to be imitated, otherwise it cannot purport to be either the whole or the part, as the case may be. Then the next consideration is, how are you to arrive at the fact—how are you to determine whether one instrument does purport to be another? First, take the case of an entire instrument. If the whole note has been engraved, I am to determine whether that purports to be the whole note of a particular banking company. In order to do that I must in some way have acquired a knowledge of the genuine instrument; I must either have in my own mind a previous knowledge of it, or must compare the forged engraving with a genuine note,—that is, I must have recourse to extrinsic evidence. I confess I do not see how it is possible, even with regard to a whole note, to determine whether it purports to be the note of a particular banking company, without comparing the two. And if that be so, why should not the same method be adopted in determining the same question as to a part? Why may I not take the part engraved, and then look at the same part in the genuine instrument for the purpose of determining whether the part engraved purports to be part of the genuine instrument,—whether so much has been engraved as will enable me to say, upon comparison, that it purports to be part? That was all that was done in this case. The jury, putting together the genuine note and the part engraved upon the plate, were satisfied that the latter purported to be part of the genuine note.

CROMPTON, J.—I also have had considerable doubt in this case, whether the prisoner could properly be convicted of engraving part of a promissory note purporting to be part of a promissory note of a particular banking company. I doubted both whether the ornament at the side could be considered part of the note, and also whether it purported to be part. But, upon consideration, what weighs upon my mind is this—that unless we give to the word “purporting” a more extended meaning than it generally bears, this statute will be ineffectual in many respects, as has been already pointed out; and upon the whole, therefore, I think that the statute must be supposed to mean that

the part engraved must purport to be part of the genuine instrument to a person who is acquainted with the appearance of a genuine note, or to a person comparing the two. As to the other point also, I am not satisfied that this may not be said to be part of the note. I suppose the word "note," in this section, must mean that which is the bank note in the popular sense, including everything which appears upon the piece of paper on which the promissory note of the banking company is written; and that it is not confined to those parts which constitute in the ordinary legal sense the promissory note of the company.

CROWDER, J.—I entertain no doubt at all that this conviction is correct. This case is clearly within the mischief against which the statute was directed; and I think that it comes also within the precise words of the section. The argument has chiefly turned upon the effect of the word "purporting;" and, as to that, it is clear to me that, before we can ascertain whether an instrument purports to be an instrument of any particular kind, we must resort to extrinsic evidence; and whether the engraving is of the whole or only of part of the instrument, there must be evidence of the genuine instrument submitted to the eyes of the jury to enable them to determine that question. The object of the statute certainly was to defeat any of the various contrivances and devices whereby the forgery of bank notes may be accomplished; and when the enactment refers to part of a note, it means, in my opinion, a part of that which circulates as a note. The plate engraved by the prisoner, when compared with a genuine note of the British Linen Company, appears to have upon it part of that which circulates as such a note, and therefore it purports to be part.

Conviction affirmed.

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KEITH.
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*Engraving part
of bank note—
Evidence—
"Purporting."*

COURT OF CRIMINAL APPEAL.

April 28, 1855.(Before POLLOCK, C. B., PARKE, B., WIGHTMAN,
CROMPTON, and CROWDER, JJ.)

REG. v. OATES. (a)

*Fraudulent overcharge—False pretences—Insufficiency of indictment—
Arrest of judgment.**A mere fraudulent overcharge for work done is not indictable under the statute against false pretences. And where an indictment alleged in one count that the prisoner falsely pretended that there was due and payable to him on account of work done a certain sum of money, being parcel of a larger sum then claimed by him in payment for the said work, whereas there was not due to him the said sum, being parcel of the said larger sum; and in another count that there was due and payable to him the whole of a certain sum of money, whereas only part was due.**Held that the indictment was bad, as it would be satisfied by proof of a mere fraudulent overcharge.*

THE defendant, Henry Oates, was indicted at the adjourned Christmas Sessions held at Sheffield, for the West Riding of Yorkshire, on the 27th February, 1855, for obtaining money by false pretences, under the following indictment:—

West Riding of Yorkshire, } The jurors for our Lady the Queen,
to wit. } upon their oath present, that Henry

Oates, on the 4th day of November, in the year of our Lord, 1854, unlawfully, knowingly, and designedly did falsely pretend to one John Robert Spencer, that he the said Henry Oates, having executed for one William Spencer and the said John Robert Spencer a certain lot and quantity of work, there was then due and payable to him the said Henry Oates from and by the said William Spencer and John Robert Spencer for and on account of the said lot and quantity of work a certain sum of money, to wit, the sum of 6s., being parcel of a certain larger sum of money, to wit, the larger sum of 16s. 7d., then claimed by the said Henry Oates in payment for the said lot and quantity of work. By means of which said false pretence, the said Henry Oates did then unlawfully obtain from the said John Robert Spencer a certain sum of

money, to wit, the sum of 6*s.*, of the monies and property of the said William Spencer and John Robert Spencer, with intent thereby to defraud. Whereas, in truth and in fact, there was not then due and payable to him the said Henry Oates the said sum of money, to wit, the sum of 6*s.*, being a parcel of the said larger sum of 16*s.* 7*d.*, from and by the said William Spencer and John Robert Spencer for and on account of the said lot and quantity of work; to the great damage of the said John Robert Spencer, &c., against the form of the statute, &c.

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And the jurors aforesaid, upon their oath aforesaid, do further present that the said Henry Oates, on, &c., unlawfully, knowingly, and designedly did falsely pretend to the said William Spencer that there was then due and owing to him the said Henry Oates from the said William Spencer and John Robert Spencer a certain sum of money, to wit, the sum of 1*s.*, being parcel of a certain larger sum of money, to wit, the larger sum of 19*s.* 9*d.*, for and on account of a certain lot and quantity of work then executed by him the said Henry Oates for the said William Spencer and John Robert Spencer. By means of which said false pretence the said Henry Oates did then unlawfully obtain from the said William Spencer a certain sum of money, to wit, the sum of 1*s.*, of the monies and property of the said William Spencer and John Robert Spencer, with intent thereby then to defraud. Whereas, in truth and in fact, there was not then due and owing to him the said Henry Oates the said sum of money, to wit, the sum of 1*s.*, being parcel of the said larger sum of 19*s.* 9*d.*, from the said William Spencer and John Robert Spencer for and on account of a certain lot and quantity of work; to the great damage, &c.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said Henry Oates, on the 6th day of January, in the year of our Lord, 1855, unlawfully, knowingly, and designedly did falsely pretend to the said William Spencer that there was then due and owing to him the said Henry Oates from the said William Spencer and John Robert Spencer the whole amount of a sum of money, to wit, the whole sum of 19*s.*, for and on account of a certain lot and quantity of work then executed by him the said Henry Oates for the said William Spencer and John Robert Spencer, by means of which said false pretence the said Henry Oates did then unlawfully obtain from the said William Spencer a certain sum of money, to wit, the sum of 10*s.* of the monies and property of the said William Spencer and John Robert Spencer, with intent thereby then to defraud. Whereas, in truth and in fact, there was not then due and owing to him the said Henry Oates the whole amount of the said sum of money, to wit, the sum of 19*s.*, but only a smaller sum of money, to wit, the sum of 9*s.*, parcel thereof, for and on account of a certain lot and quantity of work from the said William Spencer and John Robert Spencer; to the great damage, &c.

And the jurors aforesaid, upon their oath aforesaid, do further

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present that the said Henry Oates, on the 13th day of January, in the year of our Lord, 1855, unlawfully, knowingly, and designedly did falsely pretend to the said John Robert Spencer that there was then due and owing to him the said Henry Oates the whole amount of a certain sum of money, to wit, the sum of 17*s.* 11*d.*, from the said William Spencer and John Robert Spencer for and on account of a certain lot and quantity of work done and executed for the said William Spencer and John Robert Spencer by the said Henry Oates, by means of which said false pretence the said Henry Oates did then unlawfully obtain from the said John Robert Spencer a certain sum of money, to wit, the sum of 6*s.* of the monies and property of the said William Spencer and John Robert Spencer, with intent thereby to defraud. Whereas, in truth and in fact, there was not then due and owing to him the said Henry Oates the whole amount of the said sum of money, to wit, the sum of 17*s.* 11*d.*, from the said William Spencer and John Robert Spencer, but only a smaller sum of money, to wit, the smaller sum of 11*s.* 11*d.*, for and on account of the said lot and quantity of work; to the great damage, &c.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said Henry Oates, on &c., unlawfully, knowingly, and designedly did falsely pretend to the said William Spencer that there was then due and owing to him the said Henry Oates, the whole amount of a certain sum of money, to wit, the sum of 18*s.* 7*d.* from the said William Spencer and John Robert Spencer, for and on account of a certain lot and quantity of work done and executed for the said William Spencer and John Robert Spencer by the said Henry Oates, by means of which said false pretence the said Henry Oates did then unlawfully obtain from the said William Spencer, a certain sum of money, to wit, the sum of 5*s.* of the monies and property of the said William Spencer and John Robert Spencer, with intent thereby to defraud. Whereas in truth and in fact, there was not then due and owing to him the said Henry Oates, the whole amount of the said sum of money, to wit, the sum of 18*s.* 7*d.* from the said William Spencer and John Robert Spencer, but only a smaller sum of money, to wit, the sum of 13*s.* 7*d.*, for and on account of the said lot and quantity of work; to the great damage, &c.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said Henry Oates, on &c., unlawfully, knowingly, and designedly did falsely pretend to the said William Spencer that there was then due and owing to him the said Henry Oates, the whole amount of a certain sum of money, to wit, the sum of 15*s.* 6*d.* from the said William Spencer and John Robert Spencer, for and on account of a certain lot and quantity of work done and executed for the said William Spencer and John Robert Spencer by the said Henry Oates; by means of which said false pretence the said Henry Oates did then unlawfully obtain from the said William Spencer, a certain sum of money, to wit, the sum of 5*s.* of the monies and property of the said William Spencer

and John Robert Spencer, with intent thereby then to defraud. Whereas, in truth and in fact, there was not then due and owing to him the said Henry Oates the whole amount of the said sum of money, to wit, the sum of 15s. 6d. from the said William Spencer and John Robert Spencer, but only a smaller sum of money, to wit, the sum of 5s. 6d. for and on account of the said lot and quantity of work to the great damage, &c.

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It was proved that the defendant worked for the prosecutors as a journeyman, and that the quantities of work done by him for them during each week were entered in a book kept exclusively for that purpose.

The prices for the work so entered were placed in a column opposite to each quantity of work, and were added up on behalf of the prosecutors at the end of each week. The weekly totals of these prices were entered by them in this book, and the amounts of these totals were paid by them to the defendant as the ascertained sum of money due to him for work done on the production by him of this book. It was further proved that after these weekly totals had been entered as above, the defendant had altered them into larger amounts, and then had procured payment of these larger amounts on producing the books, and had afterwards erased the larger amounts and restored the figures of the original totals. The defendant was found guilty.

After verdict had been recorded, it was objected on the part of the defendant that the counts of the above indictment did not disclose any false pretence, under the 7 & 8 Geo. 4, c. 29. The court held that the objection was a good one, and arrested the judgment (*b*) in order that the case might be stated for the decision of the Court of Criminal Appeal, whether the indictment above set out discloses on its face any false pretence, under the above statute.

A. J. Johnson for the prisoner. The indictment in this case is bad in arrest of judgment; and the only question raised by the case is as to the sufficiency of the indictment. It is unnecessary, therefore, to refer to the facts set out in the case; and looking only to the allegations in the indictment, it is submitted that they show no offence within the statute against false pretences. The Sessions certainly entertained that opinion, but the case of *R. v. Woolley* (19 L. J. 165, M. C.; 4 Cox C. C. 193; 1 Den. C. C. 559), was not cited, and reliance will now be placed upon that case as an authority to support this indictment. But there are material distinctions between that case and the present. There the prisoner, who was the secretary of an Odd Fellows Lodge, represented falsely to one of the members that he owed the society a certain sum, producing at the same time a paper which purported to be a summons signed by himself, giving notice to the prosecutor that he owed the money to the lodge, and the prisoner having by those means obtained the

(*b*) This expression in the case having been noticed, some doubt was felt whether if the judgment had been already arrested, this court could interfere; but the difficulty was avoided by construing it to mean that the sessions had "respite[d] the judgment."

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money, was held to be guilty of the statutory offence of obtaining money by false pretences, but that was in effect a false representation of a matter peculiarly within the knowledge of the prisoner, the state of the accounts between the lodge and the prosecutor; and although the latter might have ascertained the truth by examining the books, the court thought that that was no excuse for the prisoner. Here, however, the facts stated upon the face of the indictment do not show any false representation by the prisoner as to an existing state of accounts between him and the prosecutor, but merely that he made too high a charge for his work. It is shown that the prisoner had a claim for work done to some extent, but the offence charged against him is that he claimed or demanded too much. That is no false pretence of anything as an existing fact; and no case has gone the length of deciding that a mere overcharge is within the statute. But in *R. v. Woolley*, Lord Campbell is reported to have said: "If a tradesman who knew that nothing was due to him from a customer, should come to the latter and tell him that 5*l.* was owing, and the customer should believe the statement and pay the amount, I think the tradesman might be indicted for obtaining the money by false pretences." It may be said that that dictum would apply to the present case, but the learned judge must be understood as having spoken with reference to a settled state of accounts between the parties, and not to have meant that where there was an open account between them a claim by one (even though made fraudulently) of 5*l.* more than was due would bring the case within the statute. [CROMPTON, J.—You say here that the alleged false representation is not a representation of a mere matter of fact, but of a conclusion of law.] Yes; and on that ground the case is distinguishable also from *R. v. Leonard* (1 Den. C. C. 303; 2 Car. & K. 514.) There the prisoner was indicted in one count for obtaining from the prosecutor an order for the payment of 14*l.* 1*s.* 2*d.* by false pretences, with intent to defraud him of the same; and in another count for obtaining an order for 16*l.* 2*s.* 8*d.*, with intent to defraud prosecutor of part of the proceeds thereof, to wit, 6*s.* 6*d.* The evidence was that the prisoner was foreman to the prosecutor, and that it was his duty to keep an account of the work done by the men and of the wages earned by them, upon production of which at the end of the week the prosecutor gave a cheque for the amount so shown to be due. Upon the occasion referred to in the first count, the prisoner presented an account showing an amount due of 14*l.* 1*s.* 2*d.*, and that account included a false charge of 7*s.* On the occasion referred to in the second count he presented an account amounting to 16*l.* 2*s.* 8*d.*, containing a false charge of 6*s.* 6*d.*, and the prisoner on both occasions applied the sums of 7*s.* and 6*s.* 6*d.* to his own use, paying the workmen properly with the remainder. The learned judges, who considered the case, were of opinion that the first count was proved, and recommended the recorder to pass a separate sentence on the other counts. In that case, therefore,

it appears that the overcharge made by the prisoner had not relation to an unsettled account, but amounted to a misrepresentation of the quantity of work which the men had done; and the first count alleges in that case, a false pretence that the account kept by him was a true and correct account; which is clearly a false pretence within the statute.

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WIGHTMAN, J.—In this case there is no count which alleges any false pretence that a particular quantity of work had been done.

POLLOCK, C. B.—The second count alleges a false pretence that there was due and owing the sum of 1*l.*, parcel of a sum of 19*s.* 9*d.*, on account of a certain quantity of work which had then been executed by the prisoner.

Johnson.—Yes; but that involves questions not only as to the quantity of work, but the price to be paid for it and the time of payment. It will open the door to very frivolous charges, if such a case is held to be within the statute.

PARKE, B.—Is a shopkeeper, who knowingly charges for an article more than it is worth, liable to an indictment under this statute?

Johnson.—It must be so held, if a conviction can be sustained in this case.

Maule, for the prosecution.—This case cannot be distinguished from *R. v. Woolley*; because there the indictment was in the same form as here, and the principle of the decision, as explained by the observations of the judges who decided it, goes the whole length of supporting a conviction in the present case. The indictment there charged the prisoner with falsely pretending that a sum of 13*s.* 9*d.* was due from the prosecutor to the lodge; and neither Lord Campbell nor any of the judges who decided that case, expressed any doubt that a false pretence of a debt being due was within the statute. An overcharge knowingly made is within the principle there laid down; and it does not matter whether there is an unsettled account between the parties or not. A person who knowingly makes a false demand upon another, and thereby obtains money, cannot relieve himself from responsibility for that, by mixing up a just demand with the false one. It is of course a question for the jury whether the representation is known to be false; and if the case were one in which the person making it had merely put an erroneous estimate on the value of his services, the jury would find the fact in his favour; but if it be established to the satisfaction of the jury that the prisoner knew that the demand was false and that no debt existed, that is as much a false pretence within the statute, as if he represented falsely that he had been sent by a third person for the money.

POLLOCK, C. B.—The evidence in this case showed that the prisoner had falsified his accounts; and the indictment should have been framed so as to show that.

Maule.—The falsification of the figures makes no difference in the case. That is evidence of the false pretence, but the pretence itself is, that the money was due. Whether the demand is made

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by words or in writing, the result is the same; and in the indictment the legal result should be stated. In the cap and gown case (*R. v. Barnard*, 7 Car. & P. 784), the false pretence alleged is, that the prisoner was a member of the university, evidenced by his wearing a cap and gown. But it is said that in this case the prisoner has only stated a conclusion of law, but that is not so. There can be no conclusion of law involved in a misstatement knowingly made, that a certain sum is due. The averment that the prisoner knew the statement to be false gets rid of all question about an estimate or a disputed account; and *R. v. Leonard* is a case very closely resembling the present.

PARKE, B.—In that case the prisoner represented that more work was done than was done. That is a representation of a fact; and the indictment also alleged that the prisoner falsely pretended that an account kept by him was a true account. There is no such averment in this case, although upon the facts it seems that there might have been. In *R. v. Woolley* there could be no question of estimate. According to the rules of the club a certain fixed sum was payable, and the prisoner pretended that according to the rules of the club, that fixed sum was so much, which was also the misrepresentation of a fact. Under the circumstances of that case, the decision in *R. v. Woolley* seems to me quite right; and there was no question upon the indictment so far as I recollect.

MAULE.—There the point taken was that the matter was as much within the knowledge of the prosecutor as the prisoner; and that point was overruled; but the whole case was before the court, and the indictment was set out.

PARKE, B.—This indictment would be satisfied by proof that the work was done by the prisoner upon a *quantum meruit*; and that the false pretence was a mere claim of too much upon a matter of doubtful value.

MAULE.—The indictment excludes any consideration of disputed amount, by alleging that the sum demanded was not due to the knowledge of the prisoner.

PARKE, B.—I can see nothing to tie you down to the proof that it was a false statement of anything as an existing fact, independent of the estimate of value.

CROMPTON, J.—What is the meaning of the allegation that the prisoner represented that there was due on account of the work, so much?

PARKE, B.—The debt consists of the amount of work done, and the agreed or estimated price. A wrong estimate of his work is not a misstatement of fact.

CROWDER, J.—The dictum of Lord Campbell in *R. v. Woolley* as to a misrepresentation that 5*l.* was owing, must be taken to have reference to the supposition of some existing agreement for 5*l.*, and not to a mere overcharge of 5*l.* upon an account.

POLLOCK, C. B.—But suppose a man having sold a customer a hat, should say to a third person, "now I will show you how to get 5*l.*;" and when the customer returned, should demand and

receive as the price of the hat 5*l.* 12*s.*—the price which he usually charged being 12*s.*; might not he be indicted under the statute for obtaining money by false pretences?

Maule.—It is submitted that he clearly might; and the case suggested shows that in truth it is not a question of averment, but a question of evidence. The proper averment is that the prisoner knowingly falsely pretended that more was due than was due; and if the evidence shows that it was merely an erroneous estimate of value, the jury would not find that the prisoner knew the statement to be false.

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POLLOCK, C. B.—We are all agreed that this conviction cannot be supported. *Woolley's case* is, at first sight, apparently an authority in favour of this indictment; but my brother Parke has informed us that the attention of the court was not drawn to the form of the indictment in that case; and that the question there was whether, in point of fact, the conviction could be sustained under the statute? Now it can hardly be contended that a man who, ordinarily selling an article for 12*s.*, sells it on one occasion for 15*s.*, is guilty of obtaining money by false pretences; and considering that in the present case the indictment charges only that the prisoner knowingly falsely pretended that a certain sum was due and owing to him in respect of work which he had done; and that that averment may involve questions of law as well as fact—we think that the indictment is bad. The statement may have turned upon a question whether the period of credit was two or three months; for whether a sum of money is or is not due involves many questions both of law and fact—the price, the value, the period of credit, and the terms of payment; and the mere allegation therefore that a prisoner pretended that money was due, does not appear to us to be a sufficiently precise allegation of the false pretence of any existing fact, so as to bring the case within the statute. The allegation of the false pretence ought, at all events, to be so precise, that any one reading it should be able to predicate what the fact was which the prisoner pretended to exist; and as that appears to us not to be the case here, judgment must be arrested. For my own part, I entertain a strong opinion that the statute does not apply at all to cases in which the transaction between the parties is really one of buying and selling.^(a) If the whole transaction is grounded in fraud, as if a shop was opened for the sale of wooden nutmegs, the statute would of course apply; but when a shop is opened in the ordinary way of business for the purpose of carrying on a particular trade, I do not think the tradesman is liable to an indictment if, in the course of a particular transaction, he misrepresents the quality or value of an article.

PARKE, B.—I am of the same opinion. I think the judgment ought to be arrested, because the statute only applies to false pretences of some existing fact, and this indictment is not so framed as to make it necessary to prove a false pretence of any

Judgment.

(a) See *R. v. Eagleton*, *post*, p. 559.

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existing fact. Every allegation is consistent with the supposition of a false claim for more than the work was really worth; and to hold the statute applicable to such a case, would shake many transactions which, though certainly not fair in themselves, are still not indictable. In *R. v. Woolley*, the question reserved had reference entirely to the facts; and there was no point made as to the form of indictment. The facts there were that the prisoner had made a false representation as to the state of the accounts between the prosecutor and a club; and, although the prosecutor had the means of detecting the misstatement, the court held, that his folly would not exonerate the prisoner. In the present case there is clearly nothing in the indictment to make it necessary to prove more than a mere matter of opinion; and it would be frightful to make a workman, who even fraudulently charges too much for his work, liable to indictment under this statute.

Judgment.

WIGHTMAN, J.—I also think that this indictment is bad. In order to bring a case within the statute, it is essential that the person charged should make a false statement as to the existence of some particular specified fact at the time alleged; and the pretence alleged in this case is that a certain sum was due and owing in respect of work done by the prisoner. Now it appears to me that that averment would be sustained by proof of facts—such as have been suggested—that is, of facts showing a mere overcharge by the prisoner, he knowing that the work was not worth so much as he had charged; and such an overcharge would not in my opinion come within the rule laid down by the decisions upon this statute. It is true that in *R. v. Woolley* the indictment was open to the same objection; and if the opinion of the court had been taken upon the indictment, that case would have been an authority for the prosecution; but the question reserved was whether, upon the facts stated, that which the prisoner had done amounted to an offence within the statute; and to that question the decision was confined. Here we are asked as to the sufficiency of the indictment, and I think that if we were to hold it to be good, we should be extending the act of Parliament so as to include a vast number of cases which were not contemplated by the Legislature in the enactment.

CROMPTON, J.—I also am of opinion that the judgment should be arrested, because it does not contain any sufficient averment of the misrepresentation of some matter as an existing fact. It only avers that the prisoner represented a certain sum to be due; but that would be proved by showing that he made a wrong estimate of amount, or made a mere wrongful overcharge, or it may have consisted in a mere misrepresentation of some matter of law—the result of some nice question arising upon the construction of a special contract. All these considerations are involved in the statement that a sum is due; and I cannot therefore consider this as necessarily amounting to an averment that the prisoner made any false pretence of an existing fact. That being so, the objection to the indictment, which was not taken in *R. v. Woolley*, must prevail.

CROWDER, J.—I am of the same opinion. Our attention is pointedly directed to the form of this indictment, and if, upon looking at the averments therein contained, it appears to be consistent with those averments, that the prisoner may either have made a mere overcharge and wrongful estimate of the value of his work, or may have made a false representation as of some existing fact,—if the indictment is capable of either interpretation, it is bad, because it does not necessarily disclose an offence. Now it certainly does seem to me to be consistent with this indictment, that the prisoner may have done no more than wrongfully charge for his work more than its just value, and, after the explanation of it given by Parke, B., *R. v. Woolley* appears not to be in point.

Judgment arrested.

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COURT OF CRIMINAL APPEAL.

April 28, 1855.

(Before POLLOCK, C.B., PARKE, B., COLERIDGE, CROMPTON, and CROWDER, JJ.)

REG. v. RUNDLE. (a)

*Ill-treatment of lunatic—Person having the care or charge of a lunatic—
Charge arising from natural obligation.*

The words of sect. 9 of 16 & 17 Vict. c. 96, "person having the care or charge of a lunatic" do not apply to those who only have such care and charge by reason of the domestic relation subsisting between them and the lunatic.

Where, therefore, a husband was convicted under that section of ill-treating his wife, he knowing her to be a lunatic, though no proceedings of any kind had been taken in respect of her lunacy:

Held that the conviction was wrong.

THE following case was reserved by CROWDER, J.:—

The prisoner was tried before me at the last Devon Assizes, on an indictment framed upon the 16 & 17 Vict. c. 96, s. 9, which also contained a count for a common assault.

There were six counts upon the statute.

The first count charged that John Rundle, the prisoner, "had the care and charge of Amelia, his wife, a lunatic," within the meaning of the statute, and that "he did abuse and ill-treat her," so being such lunatic.

The second count charged the same, substituting the words that he did "wilfully neglect" for the words "did abuse and ill-treat."

The third and fourth counts the same as the first and second,

(a) Reported by A. BITTLESTON, Esq., Barrister-at Law.

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with the additional averment that he well knew her to be "a lunatic."

The fifth and sixth counts were the same as the first and second, substituting only an averment that the said Amelia was "a person alleged to be a lunatic," for the averment that she was a "lunatic."

It appeared in evidence that for some considerable time during which the said John and Amelia were living together as man and wife, she was a lunatic, and that he knew her so to be; and that during such time he abused, ill-treated, wilfully neglected, and assaulted her. The jury found the prisoner guilty upon all the counts in the indictment.

No proceedings of any kind had been taken by any one in respect of the wife's lunacy or alleged lunacy.

The point on which I desire the opinion of the Court of Criminal Appeal is whether the prisoner, upon this evidence, was indictable under the 9th section of the said act, as a person having the care or charge of a lunatic, or of a person alleged to be a lunatic, within the meaning of the latter part of the said section.

I sentenced the prisoner to five months and a fortnight's imprisonment on the count for a common assault, and on each of the other counts to a fortnight's imprisonment concurrently, to commence at the expiration of the first five months and a fortnight. If the court should be of opinion that the counts upon the statute cannot be sustained, then the sentence to stand only on the count for a common assault. If any of the other counts be sustainable, then the sentence to stand also for the additional fortnight upon such counts.

The case was not argued by counsel on behalf of the prisoner.

Stock for the prosecution.—This conviction may be sustained upon the counts founded upon sect. 9 of 16 & 17 Vict. c. 96, which provides that, "if any superintendent, officer, nurse, attendant, servant or other person employed in any registered hospital or licensed house, or any person having the care or charge of any single patient, or any attendant of any single patient in any way abuse or ill-treat, or wilfully neglect any patient in such hospital or house, or such single patient, or if any person detaining, or taking or having the care or charge, or concerned or taking part in the custody, care or treatment of any lunatic or person alleged to be a lunatic in any way abuse, ill-treat or wilfully neglect such lunatic or alleged lunatic, he shall be guilty of a misdemeanor, and shall be subject to indictment for every such offence, or to forfeit for every such offence, in a summary conviction thereof before two justices, any sum not exceeding 20*l*. Now the question is, whether a husband has, within the meaning of that section, "the care and charge" of his wife—he knowing her to be lunatic, although her lunacy has not been ascertained by any legal proceeding. The statute in question was passed for the purpose of amending the former act (8 & 9 Vict. c. 100), which, except as amended, continues in force; and by sect. 56 of that act provision is made "that if any superintendent,

officer, nurse, attendant, servant or other person employed in any licensed house or registered hospital shall in any way abuse or ill-treat any patient confined therein, or shall wilfully neglect any such patient, he shall be deemed guilty of a misdemeanor." That section is limited to the cases of persons confined in licensed houses or registered hospitals; but sect. 90 provides for another class of persons—namely, single patients boarded and lodged for profit in any house other than a registered hospital, asylum or licensed house; and that section does not enact the same penalty against ill-treatment as is contained in sect. 56. It requires the persons who take charge of lunatics in that way to have the same order and medical certificates as are required upon the reception of a patient into a licensed house, and to transmit certain statements to the commissioners, and to cause the patient to be visited once a fortnight by a medical attendant, who derives no profit from the care of the lunatic, making it a misdemeanor not to comply with those requirements. Then, examining sect. 9 with reference to these provisions, it seems clear, that the first part of the section is sufficient to include both classes of cases, and to protect from ill-treatment both single patients and also patients confined in hospitals or registered houses. For what purpose was the latter part of the clause added? What class of persons is left to be dealt with by that part of the clause?

PARKE, B.—Not husbands and wives I apprehend. The husband is bound by law to take the care and charge of his wife; and the latter part of the section in question means only that any other person having the care or charge of a lunatic, whether for hire or not, but otherwise than by reason of domestic relationship, should be guilty of a misdemeanor by ill-treating the patient entrusted to their care.

Stoch.—The words of the section are clearly applicable to the case of a husband or father, who, as such, has the care and charge of a lunatic; and it is probable that they were intended to apply to them, because the earlier part of the section includes all the persons who have charge of lunatics for hire; and very few people will be found ready to take charge of lunatics gratuitously except those who are bound to them by relationship.

POLLOCK, C. B.—The latter part of the section may apply to persons in the situation of guardians, or to an apothecary called in to attend a lunatic patient; because he would be a person taking part in the treatment of a lunatic.

Stoch.—Sect. 68 of a statute *in pari materia* (16 & 17 Vict. c. 97) shows that the Legislature had under its consideration the case of lunatic patients being under the care of relatives only; for that section makes provision for the removal to asylums of several classes of persons—namely, lunatics wandering at large; lunatics not under proper care and control; and also any lunatic "cruelly treated or neglected by any relative or other person having the care or charge of him." It is submitted, that the meaning of the words in sect. 9 is the same.

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PARKE, B.—Sect. 68 imposes no penalty; it only provides that proper care shall be taken of lunatics who are neglected by their relations; and in that section, the word "relative" is used; but it is not in sect. 9.

CROWDER, J.—You read sect. 68 as if it were "relative having the care or charge, or other person, whether relative or not, having the care or charge."

Stock.—Yes; and that gives an explanation of the general words in sect. 9, "any person having the care or charge."

COLERIDGE, J.—Sect. 68 seems not to apply at all to cases of authoritative charge.

Stock.—So the latter part of sect. 9. It is the first part of sect. 9 which relates to cases of authoritative charge. Sect. 68 refers to the form, Schedule F., No. 1—and in that form the word relative is left out—showing that the Legislature considered the case of a relative included under the words "persons having the care or charge of him," which are found in the form.

COLERIDGE, J. — Then, according to your construction of sect. 68, it would not apply to the case of a lunatic residing with his father and ill-used by his brother, because the brother would not in that case have the care or charge of him.

Stock.—Both would probably be considered as having the care or charge.

CROWDER, J.—Here, however, the care and charge are wholly independent of the lunacy. The wife happens to be lunatic; but the care and charge does not arise from that.

POLLOCK, C. B.—We are all of opinion that so much of this conviction as relates to the question of the wife's lunacy and the punishment contingent thereon cannot be sustained. For myself I give this reason only, that, upon reading sect. 9 of this act of Parliament, and comparing it with the former act and with c. 97 of the same session, it seems to me that it was not intended to interfere with care and charge arising out of relations of a purely domestic nature, and to superadd to the ordinary obligations under which any master of a family lies as a father, husband, guardian or other relative, the weight and authority of an act of Parliament imposing penalties beyond those which the ordinary law of the land would impose. A person in the relation of husband, father or guardian, who ill-uses those under his control, is liable to be punished by the ordinary law; but I think that this enactment does not apply to a care and charge arising from the ordinary domestic relations of life, because the person ill-treated happens to be lunatic, and where she would be under the care and charge of the person accused, even if not lunatic. Although it has been ingeniously argued, that the provision in the earlier part of sect. 9 of c. 96 exhausts all other classes and leaves the latter words applicable only to relatives; and that this construction is supported by the words used in sect. 68 of c. 97, I cannot accede to that argument; for, first, all other classes are not exhausted by the earlier words; because there are no doubt many persons casually em-

ployed in taking care of lunatics, when they are brought up for examination or otherwise, who would not come under the earlier words, but are included in the latter words of the section. And, secondly, the argument itself has not the same weight when applied to an act of Parliament as it would have if applied to other documents, the precise wording of which is more carefully considered. For these reasons I have come to the conclusion that the section was not intended to apply to a mere domestic custody.

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PARKE, B.—I am of the same opinion. I entirely concur with the Lord Chief Baron that this section only applies to such persons as have the charge and care of lunatics otherwise than by reason of natural duty, and does not extend to the case of a husband with respect to his wife, or to a parent with respect to his child. Persons standing in that relation to a lunatic cannot be considered as having the care and charge of him in the same sense in which those words are applied to other persons in this section; and though sect. 68 of c. 97 uses the word "relative" in conjunction with the words "having care or charge," it does not extend the operation of sect. 9; nor, indeed, impose any punishment for the neglect of the relative, but only provides for the proper treatment of the patient.

COLERIDGE, J., CROMPTON, J., and CROWDER, J., concurred.

Conviction quashed, except as to one count.

COURT OF CRIMINAL APPEAL.

June 2, 1855.

(Before CAMPBELL, C.J., ALDERSON, B., ERLE, J., PLATT, B.,
and CROWDER, J.)

REG. v. THOMAS SMITH. (a)

Felonious receipt of stolen goods—Evidence—Property in the manual possession of another person under the control of prisoner.

Upon the trial of an indictment for feloniously receiving a stolen watch, it was proved that the prisoner, who had been present at the time when the watch was stolen, afterwards went to the prosecutor, and offered to get it back for him. The prosecutor agreed to pay a sum of money, and sent a woman with the prisoner to fetch the watch. They went to a room, where was another man, who placed the watch upon the table; and the prisoner directed the woman to take it to the prosecutor, which she did.

The jury were directed, that if they believed that the prisoner knew the watch to have been stolen, and also believed that it was in the custody of another person with the cognizance of the prisoner, that person being one over whom the prisoner had absolute control, so that the watch would be forthcoming if he ordered it, there was ample evidence to justify them in convicting the prisoner.

The jury found a verdict of guilty, stating their belief, that though the watch was in the hands of another, it was in the prisoner's absolute control.

Held, that the direction was right, and the conviction warranted by the evidence, although the same evidence would also have warranted a conviction for larceny.

THE following case was reserved by the Recorder of Brighton:—

At the Quarter Sessions of the peace for the borough of Brighton, holden &c., on the 8th day of May, 1855, the prisoner Thomas Smith was indicted for feloniously receiving a stolen watch, the property of John Nelson, knowing the same to have been stolen. It was proved that John Nelson, the prosecutor, between eleven and twelve o'clock at night of the 12th of April in this year, was

(a) Reported by A. BITTLESTON, Esq., Barrister-at-Law.

in a public-house called the Globe, in Edward-street, in the said borough. He was in company with a prostitute, named Charlotte Duncan, who lodged in a room of a house, No. 17, Thomas-street, Brighton, which belonged to the prisoner, of whom she rented the room.

The prisoner and five or six other persons were present in the apartment in the Globe Inn when the prosecutor and Charlotte Duncan entered. While the prosecutor was drinking in the Globe, his watch, being the watch named in the indictment, was taken from his person by some one who forced open the ring which secured the watch to a guard. The prosecutor heard the click of the ring and immediately missed his watch and taxed the prisoner as the thief. A policeman was sent for and a partial search was made, but the watch was not found. The prisoner was present all that time. Soon after the loss of the watch, the prosecutor and the girl Charlotte Duncan went together to Charlotte Duncan's room in Thomas-street. After they had been there together little more than an hour, the prisoner came into the room where they were, and said to the prosecutor "Was not you in the Globe, and did not you lose your watch?" The prosecutor said "Yes." The prisoner then said, "What would you give to have your watch back again?" Prosecutor said "I'd give a sovereign." Prisoner then said "Well, then, let the young woman come along with me and I will get you the watch back again." Charlotte Duncan and the prisoner then went together to a house close by, in which the prisoner himself lived. They went together into a room in which Hollands was. This was nearly one o'clock; there was a table in the room. On first going in Charlotte Duncan saw there was no watch on the table: but a few minutes afterwards she saw the watch there. The prisoner was close to the table. She did not see it placed there, but she stated it must have been placed there by Hollands, as if the prisoner to whom she was talking had placed it there she must have observed it. The prisoner told Charlotte Duncan to take the watch and go and get the sovereign. She took it to the room in 17, Thomas-street, to the prosecutor, and in a few minutes the prisoner and Hollands came to that room. Hollands asked for the reward. The prosecutor gave Hollands 2s. 6d., and said he believed the watch was stolen, and told him to be off. Hollands and the prisoner then left. The prisoner did not then say anything, nor did the witnesses see him receive any money. Hollands absconded before the trial.

The recorder told the jury that if they believed that when the prisoner went into the room, 17, Thomas-street, and spoke to the prosecutor about the return of the watch, and took the girl Duncan with him to the house where the watch was given up, the prisoner knew that the watch was stolen: and if the jury believed that the watch was then in the custody of a person with the cognizance of the prisoner, that person being one over whom the prisoner had absolute control, so that the watch would be forthcoming if the prisoner ordered it, there was ample evidence to

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justify them in convicting the prisoner for feloniously receiving the watch.

The jury found the prisoner guilty; and, in answer to a question from the recorder, stated that they believed that, though the watch was in Hollands' hand or pocket, it was in the prisoner's absolute control. Sentence was passed on prisoner, but was respited until the opinion of the court could be taken.

The question for the opinion of the court is whether the conviction of the prisoner is proper.

Creasy, for the prisoner.—The direction of the recorder was wrong and the conviction wrong. There was no sufficient proof of a possession by the prisoner; or, if Hollands' possession is to be treated as the prisoner's, then there is no proof that the watch was stolen by some other person. The direction would mislead the jury; because, if the transaction at the Globe Inn is relied upon as showing concert between the prisoner and Hollands, then the evidence shows a stealing by them and not a receiving. The prosecution, in order to make out the charge of receiving, were bound to lay before the jury evidence that the stealing was by some other person: (2 Russell on Crimes (ed. Greaves) 247, citing *R. v. Densley*, 6 Car. & P. 399, per Patteson, J.)

PLATT, B.—Was not the prisoner also indicted for stealing the watch?

Creasy.—Yes; but he was acquitted of that charge the day before he was tried for receiving. That circumstance, however, ought not to prejudice his case; and it is submitted that no act of receiving is proved against him. If Hollands was the thief, the stolen property continued in his possession throughout; and according to the decision of the majority of the judges in *R. v. Wiley*, 20 L. J. 4, M. C.; 2 Den. C. C. 37, neither the circumstance that the property was in the prisoner's house nor the expressions which he used, would afford any sufficient evidence of a possession by him. (He referred to the judgments of Alderson B., Platt, B., and Patteson, J., in *R. v. Wiley*.) The possession of the girl was as agent for the prosecutor, not for the prisoner.

LORD CAMPBELL, C. J.—Do you say that there cannot be any case of joint possession by thief and receiver? I think all the judges in *R. v. Wiley* agreed that there might.

ALDERSON, B.—In that case the jury were not properly directed; but here the very distinction taken in that case has been explained to the jury.

Creasy.—But there is no evidence here of any such possession by the prisoner, as the judges held to be necessary.

PLATT, B.—The prisoner claims dominion over the watch.

ERLE, J.—“Possession” is one of the most vague of all vague terms, and shifts its meaning according to the subject-matter to which it is applied,—varying very much in its sense, as it is introduced either into civil or into criminal proceedings. But what principle, do you say, is to be extracted from *R. v. Wiley*?

Creasy.—This at least—that mere companionship with the

thief and a corrupt bargaining for the stolen property, are not enough to render a man liable to conviction as a receiver. Parke, B., in his judgment, points out the distinction between a receiving of the stolen goods within the statute, and a receiving of the thief, he keeping possession of the goods. Patteson, J., also lays it down that to constitute the offence of receiving the goods must be under the prisoner's control. Between the theft and the completion of that transaction, which is presented as evidence of a felonious receiving, something must occur to transfer the possession; and in this case the lapse of time between the stealing and the supposed evidence of receiving, is very short. Everything therefore, points to a joint participation between Hollands and the prisoner from the beginning; and, indeed, the prisoner was charged with the theft at the time.

ERLE, J.—What evidence is there that Hollands was the thief?

Creasy.—Possession of the watch recently after it was stolen; and if the prisoner had possession of it at all, his possession also was, under the circumstances, evidence of stealing and not of receiving.

No counsel appeared for the prosecution.

LORD CAMPBELL, C. J.—I am of opinion that this conviction is right; and the direction of the learned recorder unexceptionable. According to all the cases, and the dicta of the judge's manual, possession of the stolen property is unnecessary in order to constitute the offence of receiving; and to lay down the contrary, would indeed be proclaiming impunity for the receivers of stolen goods. Further, according to the decisions, including *Wiley's case*, there may be a joint possession by the thief and the receiver, and it is a question for the jury whether there has been such a possession. In *Wiley's case*, a majority of the judges thought that that question had not been properly left to the jury; and that was the *ratio decidendi*. Here the case was properly left to the jury; and I should say, adopting the expression of the recorder, that there was "ample evidence" to justify the jury in coming to the conclusion at which they did arrive. They might certainly, upon this evidence, have come to a different conclusion, and they might have believed that Smith was the thief. If the prisoner had been indicted for larceny, and the jury had found him guilty, I should have thought that they had come to a right conclusion upon the facts; and if the jury in this case had drawn that conclusion, the prisoner would certainly have been entitled to an acquittal. There was also another inference which the jury might have drawn,—namely, that Hollands being the thief, the property remained in his exclusive possession, and that Smith acted merely as the agent between him and the prosecutor to negotiate for the return of the stolen property. In that case there would have been no possession at all by Smith; and he would have been entitled to an acquittal. But the jury have formed a different opinion upon the evidence,—one which they were quite justified in forming—

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namely, that even if Hollands was the thief, he had placed the watch under the control of Smith for the purpose of disposing of it. We know from real life as well as from dramas and novels, that such arrangements are actually made as that between Peachum and Lockit in the Beggar's Opera; and if in pursuance of an arrangement between Smith and Hollands, the property was deposited in a place where it would be under the control of Smith, there would be a possession by Smith as well as Hollands, if the possession of Hollands continued. What took place at the time when the watch was delivered up, afforded evidence of some such arrangement, and I therefore am clearly of opinion that there was evidence for the jury of a possession by Smith of the stolen chattel, he knowing it to have been stolen.

ALDERSON, B.—I also think that there was abundant evidence from which the jury might not unreasonably draw the inference that the prisoner was the receiver. They might have drawn the conclusion that he was the thief; but they might also believe his own statement and think that he had not stolen but received the watch. If the watch was delivered to the prisoner, he knowing it to be stolen, for the purpose of obtaining money by returning it to the owner, what difference does it make whether Hollands was a party to that arrangement? The prisoner was exercising control over and dealing with the stolen property.

ERLE, J.—I doubt whether the word "receive" in the statute is used as equivalent to "receive into possession." I do not think that *possession* is a word properly applicable to the subject; and Patteson, J. in *R. v. Wiley*, appears to me to employ a better expression when he says—that in order to constitute a receiving manual touch is not necessary; but it is enough if the receiver has control over the property stolen. In that view of the subject the direction of the Recorder was right; and the evidence warrants the finding.

PLATT, B.—Although there was some evidence of Smith being the thief, there certainly were circumstances in the case which might well lead the jury to suppose that some other person had committed the robbery; for the stolen property is immediately missed, the prisoner charged with the theft and a partial search made, yet no watch found.

CROWDER, J.—I also think the direction right, and the jury justified in finding the prisoner guilty. They certainly might conclude that Hollands was the thief; and then the question would arise whether the watch was ever under the control of Smith. Upon this evidence I think it was; and that the conviction is right.

Conviction affirmed.

COURT OF CRIMINAL APPEAL.

July 9, 1855.

(Before JERVIS, C.J., POLLOCK, C.B., PARKE, B., ALDERSON, B., MAULE, J., WIGHTMAN, J., CRESSWELL, J., ERLE, J., PLATT, B., WILLIAMS, J., MARTIN, B., and CROMPTON, J.)

REG. v. EAGLETON. (a)

Misdemeanor—Attempt to commit—Indictment—Fraud—Breach of contract—Delivering short weight—False pretences—Attempt to obtain money—Obtaining credit in account.

An indictment in one count charged A. with a fraud; alleging that he had contracted with the guardians of the poor to deliver to the out-door poor of a certain parish loaves of bread of a certain weight, at a certain price; but that he had delivered to different poor people loaves of less weight, intending to deprive them of proper and sufficient food and sustenance, and to endanger their healths and constitutions, and to cheat and defraud the guardians.

Held, that this count could not be sustained, as the delivery of a less quantity than that contracted for was a mere private fraud, no false weights or tokens having been used.

Another count charged the defendant with attempting to obtain money from the guardians by falsely pretending to the relieving officer that he had delivered to certain poor persons certain loaves, and that each loaf was of a certain weight.

The evidence was that he had contracted to deliver loaves of the specified weight to any poor persons bringing a ticket from the relieving officer, and that the duty of the defendant was to return those tickets at the end of each week, together with a written statement of the number of loaves delivered by him to the paupers; whereupon he would be credited for that amount in the relieving officer's book, and the money would be paid at the time stipulated in the contract, namely, at the end of two months from a day named. The defendant having delivered loaves of less than the specific weight, returned the tickets, and obtained credit in

(a) Reported by A. BITTLETON, Esq., Barrister-at-Law.

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account for the loaves so delivered ; but before the time for payment of the money arrived the fraud was discovered.

Held, that this was a case within the statute against false pretences, because the defendant had been guilty of a fraudulent misstatement of an antecedent fact, and had not merely sold goods to the prosecutors upon a misrepresentation of weight or quality.

Quære, whether a case of the latter description is within the statute ?

Held, also, that although the defendant had obtained only credit in account, and could not, therefore, have been convicted of the complete offence, he might be convicted of an attempt to obtain money, he having done all that depended upon himself towards obtaining it.

THE following case was stated by the Recorder of Great Yarmouth :—

The defendant was tried at the Quarter Sessions for the borough of Great Yarmouth, holden on the 1st day of March, 1854, upon an indictment, a copy of which is annexed. The evidence was a contract dated 27th of December, 1852, and a bond of the same date (copies of which are also annexed); and it was proved that on poor persons applying for out-door relief, the relieving officer gave the applicant a ticket in the following form :—

31.

BREAD.

One Loaf.

WM. HARBERT.

The poor person on presenting the ticket to the defendant was entitled to receive a loaf, and could not obtain a loaf elsewhere on such ticket. As many as twenty of these tickets were given on Saturday the 21st of January last, to as many out-door poor by the relieving officer, and the poor persons on presenting them to the defendant received the number of loaves mentioned in the ticket. By the course of dealing the defendant would return the tickets on the following week, with a statement in writing of the number of loaves he had supplied, but no other particular would be delivered, and the relieving officer would credit the defendant in his books for the amount, and the money would then be paid to him at the time stipulated in the contract.

These tickets were returned by the defendant to the relieving officer with the note of the number of loaves, and the defendant had credit accordingly.

It was objected on the part of the defendant that no one count set out an offence, and that the evidence did not support any of the first seven counts for fraud, nor the last three as an attempt to obtain money by false pretences.

The jury found that the loaves of bread furnished by the defendant were deficient in weight, and were so with the knowledge of the defendant, and that he intended thereby to defraud the out-door poor for whose relief they had been ordered; and that in

returning the tickets to the relieving officer he intended to represent that he had delivered the loaves mentioned on them of the weight stated in the contract, and returned a verdict of guilty.

I have to request the opinion of the Court of Criminal Appeal upon the objections taken on the part of the defendant.

This case came on to be argued at a sitting of this court holden on the 28th of April, 1854, and upon that occasion the court directed that the case should be referred back to the arbitrator to state the evidence more fully with respect to the last three counts of the indictment. Subsequently the case was accordingly amended by the addition of the following evidence.

William Wilson.—The attesting witness to the contract and bond of which copies are annexed to the case.

William Harbert (the relieving officer for the south district), who stated that the out-door poor, who were ordered by the guardians to be relieved by giving them bread, applied to him, as relieving officer, for a ticket which he gives in the form set forth in the case, being either for one loaf or two loaves, as ordered. That these tickets are given weekly, and the poor person takes the ticket to the contractor and receives the loaf or loaves as mentioned upon it. That the contractor in the ensuing week returns the tickets to the relieving officer giving them, with a note stating the number sent, and the contractor is credited in the account with the guardians with the weight of the bread mentioned on the tickets, and is paid at the time mentioned in the contract. That the loaves delivered to the poor should be each of three and a half pounds weight. That on the 21st day of January the witness was the contractor. That witness on that day gave to different out-door poor persons thirty-eight tickets, thirty-two being for one loaf, and six for two loaves each. That Susanna Godfrey had a ticket for two loaves, Elizabeth Bowles for one, Ann Parker for two, and Elizabeth Fean for one loaf, but he could not tell to whom each ticket was delivered. That all the thirty-eight tickets given by the witness on the 21st day of January, were returned to him by the defendant on Monday the 23rd day of January, with a note in the defendant's writing stating the number of tickets sent back, and witness entered them to the credit of defendant's account in the receipt and expenditure book of the guardians. That in the evening of the 21st day of January, he made inquiry of the poor persons to whom he had given tickets as to the weight of the loaves they had received from the defendant, when he found that many of the loaves had been eaten either in part or wholly, so that the weight could not be ascertained, but that Susanna Godfrey had her two loaves, Elizabeth Bowles her one, Ann Parker one of her two, and Elizabeth Fean her one. That these were all deficient in weight, being weighed by witness or in his presence.

Susanna Godfrey.—Received a ticket on the 21st for two loaves; she sent her son John with it to the defendant, and he

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brought her back two loaves; they were weighed in the evening and were both short in weight.

John Godfrey.—Took the ticket to defendant and gave it to him, and received of him two loaves which he gave his mother.

Elizabeth Bowles.—Took the ticket to defendant and gave it to him, and received one loaf; it was short in weight.

Ann Parker.—Received a ticket for two loaves; she sent her son William with it to defendant and he brought her two loaves, which loaves she gave Harbert on the Monday.

William Parker.—Took the ticket to the defendant and gave it to him, and received from him two loaves which he gave to his mother.

William Christmas Nutman.—Relieving officer for the north district—delivered twenty-one tickets on the 21st day of January to out-door poor persons for bread; all these twenty-one tickets were returned to witness by the defendant on the afternoon of the following Tuesday the 24th, with a note in the defendant's writing stating the number of tickets sent back, but he could not tell to whom each ticket was delivered, but James Mayer, John Bowles, James Pitt, and Edward Campbell, were among the out-door poor persons, to whom he gave tickets. On the same day he gave an order to Samuel Lingwood (who was a casual poor person), upon defendant for two loaves which were each to weigh three and a half pounds; that this order was returned to him on the 31st day of January, a week after defendant had been held to bail, to answer a charge of fraud; this order he knew from Samuel Lingwood's name being written by him, witness, on it. This witness inquired of the poor, to whom he had delivered tickets, as to the bread they had received, and obtained one loaf from Mayer, one from Knowles, one from Pitt, one from Campbell, and one from Lingwood, being all he could get, and they were all short in weight.

Samuel Lingwood.—Took the order to defendant on the 21st day of January, who gave him two loaves, one he ate, and the other weighed three pounds one ounce only.

John Bowles gave the ticket to his wife Sarah Bowles.

Sarah Bowles took it to defendant and gave it to him; he gave her two loaves; she weighed one and it was short in weight nearly four ounces, and defendant afterwards gave her three pieces of bread to make up the weight.

James Mayer.—Received the ticket from Nutman; took it to defendant and left it with him; defendant gave him two loaves, one he ate, and the other he gave to Nutman.

Sarah Pitts.—Received the ticket of Nutman, delivered it to defendant, and she had from him two loaves; one she ate, and the other she gave to Nutman; it was four ounces and three quarters short.

Edward Campbell.—Received the ticket of Nutman and gave it to defendant and received two loaves, which he gave to Elizabeth Spanton his mother.

Elizabeth Spanton.—Gave one of the loaves to Nutman; it weighed three pounds four ounces and-a-half bare; the other was eaten.

The first count of the indictment alleged that heretofore, to wit, on the 3rd day of December, A.D. 1853, in the parish of Great Yarmouth, &c., the guardians of the poor of the said parish of Great Yarmouth, in the county of Norfolk, duly and publicly advertised in a certain county newspaper, to wit, the *Norfolk Chronicle*, for tenders for the supply of bread made from the best household flour, at per loaf of three pounds and one half of a pound for out relief, from the 24th day of December in the year aforesaid, till the 25th day of March then next; and that thereupon John Eagleton of &c., baker, to wit on the 22nd day of December in the year first aforesaid, duly tendered, and he then and there duly and in pursuance of the statutes in such case made and provided, and in due and full compliance with the rules, orders, and regulations made and issued by the Poor Law Commissioners for England and Wales, became and was the contractor with the said guardians for the supply to the out-door poor of the said parish at such time and in such manner as the said guardians, or any other person or persons duly authorized by them, should from time to time direct, of such quantities of bread made from the best household flour, in loaves weighing three pounds and one half of a pound at sevenpence per loaf, as should be required by the said guardians for the use of the out-door poor of the said parish. And that after making the said engagement and undertaking, and whilst the said John Eagleton was such contractor as aforesaid, to wit on the 21st day of January A.D. 1854, at the parish aforesaid, William Harbert then being one of the relieving officers of the poor of the said parish, by the orders and authority of the said guardians of the poor, then and there gave as and for relief to divers, to wit, one hundred poor persons being out-door poor of the said parish, divers, to wit, one hundred orders and tickets signed under the authority aforesaid, by the said William Harbert, for the supply of divers, to wit, two loaves of bread to each of the said poor persons respectively. And that the said William Harbert being duly authorized in that behalf as aforesaid, then and there directed the said poor persons to produce and show, and that the said poor persons did then and there produce and show to the said John Eagleton the said orders and tickets, in order that the said John Eagleton might supply and deliver to the said poor persons respectively for their sustenance and support, the number of loaves specified in the said orders and tickets respectively. And that the said William Harbert thereby then and there, being duly authorized in that behalf as aforesaid, ordered and directed the said John Eagleton to supply and deliver to the said poor persons respectively the number of loaves of bread in the said orders and tickets respectively specified, in pursuance of and according to the terms of his said contract and undertaking. And that the said poor persons were not, nor was any or either of them authorized

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by the said guardians or by the said William Harbert, or by any or either of them, or by any other person whatsoever to obtain, and that the said poor persons were, and each and every of them was wholly unable to obtain the said loaves of bread or any bread whatsoever, by means of the said orders and tickets, elsewhere, or from any other baker or person whatsoever, but only from him the said John Eagleton, of all which premises the said John Eagleton then and there had notice. And that the said John Eagleton then, to wit, on the day and year last aforesaid, at the parish aforesaid, in the borough aforesaid, and within the jurisdiction of this court, so being such contractor as aforesaid, not regarding his duty in that behalf, but under colour and pretence of his said contract, and contriving and intending to injure and defraud the said poor persons respectively, and to deprive them of proper and sufficient food and sustenance, and to endanger their healths and constitutions respectively, and further contriving and intending to cheat and defraud the said guardians, unlawfully and fraudulently supplied and delivered to divers, to wit, fifty of the said poor persons who then respectively produced and showed to the said John Eagleton the said orders or tickets as aforesaid, divers, to wit, one hundred loaves of bread, as and for loaves of bread weighing respectively three pounds and one half of a pound each loaf. Whereas the said loaves respectively, as he the said John Eagleton then well knew, were not of the weight of three pounds and one half of a pound each loaf, but each of them was of a far less weight, to wit, of the weight of three pounds and four ounces and no more, in breach of his duty as such contractor as aforesaid, to the fraud, great damage, and prejudice of the said poor persons respectively, and to the great danger of their healths and constitutions respectively; in contempt of our said Lady the Queen and her laws, and to the evil example of others, and against the peace of our said Lady the Queen, her crown and dignity.

Second count same as first, except that it alleged a delivery of tickets to the out-door poor by William Christmas Nutman, another relieving officer.

Third count substantially the same, but stating the contract and duty more generally, and alleging the delivery of divers tickets by several relieving officers, not by naming them.

Fourth count same as third, but alleging that defendant supplied two loaves of short weight to one Susanna Godfrey.

Fifth count, in substance the same, but alleging a supply of loaves of short weight to Elizabeth Bowles.

Sixth count, same—alleging a supply of loaves of short weight to Samuel Lingwood.

Seventh count, same—alleging the supply to James Mayer.

Eighth count—That heretofore, to wit, on the 21st day of January, 1854, at the parish, &c., and within the jurisdiction of this court, John Eagleton unlawfully, knowingly, and designedly did falsely pretend to one William Christmas Nutman, then being relieving officer of the said parish of Great Yarmouth, that he the said

John Eagleton had, on the day and year last aforesaid, supplied and delivered to one Samuel Lingwood, then being a poor person of the parish, two loaves of bread, and that each of the said two loaves then weighed three pounds and one half of a pound, by means of which said false pretence, the said John Eagleton did then and there unlawfully attempt and endeavour fraudulently, falsely, and unlawfully to obtain from the guardians of the poor of the said parish a sum of money to wit, the sum of one shilling of the moneys of the said guardians, with the intent thereby then and there to cheat and defraud. Whereas in truth and in fact the said two loaves of bread did not each weigh, nor did either of them weigh three pounds and one half of a pound; against the form of the statute in such case made and provided, &c.

Ninth count, same as eighth, but alleging as the false pretence that he had delivered to James Mayer loaves weighing three and a half pounds each.

Tenth count, same as eighth, but alleging a false pretence made to William Harbert, that he had delivered loaves of full weight to Elizabeth Bowles.

The contract which was annexed to the case bore date 22nd December, 1853. It recited the orders of the Poor Law Commissioners for the constitution and regulation of the Board of Guardians, the advertisement by the guardians and the tender by Eagleton. It then contained the terms of agreement between the parties thus: "and the said John Eagleton doth, in consequence of the payment to be made to him as hereinafter mentioned, hereby contract with the said guardians that he the said J. E., will henceforth until the 25th day of March next, serve, supply and deliver, or cause to be delivered to the out-door poor at such times and in such manner as the said board of guardians, &c., shall from time to time direct, such quantities of bread and flour as shall be required, &c., at and after the rates or prices following, that is to say, bread made from the best household flour in loaves of three and a half pounds each, &c., at sevenpence per loaf." Then followed the agreement by the guardians to pay "at and after the rates and prices aforesaid, during the said term, for every quantity of the said articles so to be ordered, served, supplied and delivered, and of which a bill of particulars shall be sent with the said articles at the time of the delivery thereof, within two calendar months from the said 25th day of March next."

The agreement proceeded thus:—

"Provided always, and it is hereby expressly agreed, and particularly by and on the part of the said J. E., that in case such articles shall not be duly served, &c., when and as required by the said board, &c., and when delivered shall not in every respect be of the quality and sort contracted for, or shall be deficient in the weight stated and charged for in such bill of particulars, &c., or if delivered without such bill of particulars, they the said board, &c., shall be at liberty to return the same at the expense of the said J. E., &c. And that in every such case it shall be lawful for the

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C. C. 224; *R. v. Crosby*, 1 Cox C. C. 10); and so an indictment for attempting to obtain credit in account would be equally bad (*R. v. Garrett*, 6 Cox C. C. 260; 23 L. J. 20 M. C.); and though the indictment in the present case alleged an attempt to obtain money the proof was only of an attempt to obtain credit. According to the contract, the credit given might never result in a money payment at all; for the guardians were at liberty to return the bread, and to deduct the cost of obtaining a supply elsewhere.

On the part of the prosecution, it was answered that the obtaining of credit in account was a proximate step towards obtaining money; and that any step taken towards the commission of a misdemeanor was itself a misdemeanor: (*R. v. Chapman*, 18 L. J. 152 M. C.; 1 Russ. on Crimes, 47.) The mere contingency of the guardians obtaining a supply elsewhere, did not render the act of the defendant less an attempt to obtain money; and the indictment, which so alleged the attempt, had been established in fact by the verdict of the jury.

Cur. adv. vult.

JUDGMENT.

PARKE, B., now delivered the judgment of the court. This case came originally before the Court of Criminal Appeal in the beginning of last year. It was reserved by Mr. Palmer, the Recorder of Great Yarmouth, upon a trial before him of an indictment containing ten counts. The first seven charged the defendant, a baker, with a fraud. He is alleged to have contracted with the guardians of the poor to deliver for a certain term, to the out-door poor of the parish of Great Yarmouth, in such manner as the guardians or any other person authorized by them, should direct, quantities of bread made of the best household flour, in loaves, each loaf weighing three pounds and a half, to be paid for at sevenpence a loaf; and is charged with having delivered loaves to different poor people of less weight, intending to deprive them of proper food and sustenance, and to endanger their healths and constitutions, and to defraud the guardians of the poor.

The last three counts charged the defendant with a misdemeanor in attempting to obtain money from the guardians by falsely pretending to the relieving officer that he had delivered to certain poor persons a certain number of loaves, and that each of those loaves weighed three pounds and a half. The Court of Criminal Appeal, which sat on the 29th of April, 1854, thought that the defendant could not be convicted on any of the first seven counts, as the delivering less than the quantity contracted for was a mere private fraud, no false weights or tokens having been used; and further that it did not appear to be indictable on the ground that the defendant delivered unwholesome provisions; nor was that offence charged in the indictment. But the judges (a) then forming the court, were inclined to think that the last three counts were maintainable; but as it was contended, on the part of the defendant, that the evidence first stated by the learned

(a) Pollock, C.B., Parke, B., Crosswell, Erle, and Crompton, JJ.

Recorder did not appear to make out the specific offence mentioned in those counts, the case was referred back to him to state the evidence more fully. This was done, and the amended report considered on the 3rd June, 1854, before Lord Campbell, and Alderson, B., Coleridge, J., Martin, B., and Crowder, J. Upon the argument the judges doubted of the propriety of the conviction on the last three counts, and desired the case to be argued before the fifteen judges.

Accordingly Lord C. J. Jervis, the Lord Chief Baron, Parke, B., Alderson, B., Erle, J., Platt, B., Martin, B., and Crompton, J., assembled on December 2, 1854; and on February 3, 1855, the Lord Chief Justice, Parke, B., Maule, J., Wightman, J., Cresswell, J., Platt, B., Williams, J., Crompton J., and Martin, B., on which last day the case was fully argued by Mr. Bulwer for the prosecution, and Mr. Clerk for the prisoner.

It was contended by Mr. Clerk for the prisoner, that the indictment for attempting to obtain money by false pretences could not be supported, because the offence of obtaining money under false pretences was committed only where the money was obtained wholly without consideration, and the offence was analogous to larceny, of which the prisoner might by statute 7 & 8 Geo. 4, c. 29, section 53, be convicted, in case the offence should appear on the trial to be larceny.

There are many cases, as is mentioned in that section, in which the distinction is very subtle between the misdemeanor of obtaining money under false pretences and larceny, and it was very proper to make that provision in the statute; but it does not follow that all the cases of obtaining money by false pretences are of that description. But it was strongly contended that the statute against obtaining money by false pretences applies to no cases where there is some bargain or consideration for giving the money, and so some cause for the giving of it other than the false pretence, as where goods were sold under a false representation of the quality or value, and the purchaser had the commodity; for otherwise the range of indictable offences would be greatly extended, and breaches of contract made the ground of criminal proceedings. If this had been the case of a sale of bread to the prosecutors with a false representation of the weight, and an attempt thereby to receive a larger price than was really due, we should have had to decide whether an indictable offence had been thereby committed, and should have had to consider the case of *The Queen v. Kenrick*, (a) which was the case of a sale of horses by means of a false representation of their being the property of a private gentleman, and quiet to ride and drive; and also that of *The Queen v. Abbott*, (b) decided upon the authority of *The Queen v. Kenrick*. In all these cases the prosecutor did not part with his money merely on account of the false pretence, but principally because he had a consideration for it in the property vested in him by the contract.

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(a) 5 Q. B. Rep. 49.

(b) 1 Den. Cr. Cases, 273.

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But this is not the case of a sale of goods by a false pretence of their weight; it is an attempt to obtain money by the false and fraudulent representation of an antecedent fact, viz., that a greater number of pounds of bread had been delivered than had been actually delivered, and that representation made with a view of obtaining as many sums of twopence as the number of loaves falsely pretended to have been furnished amount to. In this respect the present case exactly resembles that of *The King v. Mitchell*, (c) where the prisoner obtained money by the false pretence that certain workmen whom it was his duty to pay, had earned more than they really had; and since then, there are other cases of similar convictions where the prisoner falsely stated the quantity of work which he had done, according to which he was to be paid. We therefore think that the indictment would be maintainable if the money had been obtained. A second objection was, that the defendant was not to obtain the price of the number of pounds, falsely stated to have been delivered, in cash, but only to have credit in account. The statement of the learned Recorder is, that the defendant was to return the tickets given to the paupers by the relieving officers, and by them delivered to the defendant on receiving the loaves, and upon such return, with a written statement of the amount of loaves on the following week, he would be credited in the relieving officer's book for the amounts, and the money would be paid at the time stipulated in the contract, that is, in two calendar months from the 25th March following. No further step would be necessary for the defendant to receive payment. The defendant did obtain credit in account from the relieving officer, in effect for the amount of the number of pounds falsely represented to have been delivered. Further, the contract with the Board of Guardians stipulates, that if the defendant should fail in his performance of it, the Board of Guardians might deduct the damages and costs sustained thereby from the sums payable to him for loaves supplied. On the part of the defendant, his learned counsel contended—1st. That the attempt to obtain credit in account for a sum of money by delivering up the tickets as vouchers, was not in itself an attempt to obtain money within the meaning of the statute, for that credit in account was not equivalent to money; and no doubt the credit in the relieving officer's book was not equivalent to money, and the defendant could not have been convicted of the offence of actually obtaining money by false pretences. 2ndly. He contended that the credit in account would not necessarily lead to an ultimate payment, for there might be deductions for breaches of contract which would prevent any payments in cash by the guardians. We have had great doubt on this part of the case, but do not think that this objection should prevail. We think that the contingency of the whole sum due to him being subject to deductions in a future event, does not the less make the obtaining credit an

attempt to obtain money, if it would be so without that contingency. But our doubt has been whether the obtaining that credit, though undoubtedly a necessary step towards obtaining the money can be deemed an attempt to do so. The mere intention to commit a misdemeanor is not criminal, some act is required; and we do not think that all acts towards committing a misdemeanor are indictable. Acts remotely leading towards the commission of the offence are not to be considered as attempts to commit it; but acts immediately connected with it are; and if in this case after the credit with the relieving officer for the fraudulent overcharge, any further step on the part of the defendant had been necessary to obtain payment, as the making out a further account, or producing the vouchers to the board, we should have thought that the obtaining credit in account with the relieving officer would not have been sufficiently proximate to the obtaining of the money.

But on the statement in this case no other act on the part of the defendant would have been required. It was the last act depending on himself towards the payment of the money, and therefore it ought to be considered as an attempt. The receipt of the money appears to have been prevented by a discovery of the fraud by the relieving officer, and it is very much the same case, as if, supposing rendering an account to the guardians at their office with the vouchers annexed were a preliminary necessary step to receiving the money, the defendant had gone to the office, rendered the account and vouchers, and then been discovered, and the money consequently refused.

Conviction affirmed on the last three counts.

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APPENDIX.

FORMS OF INDICTMENT

FOR

OFFENCES TRIABLE AT COURTS OF QUARTER SESSIONS.

UNDER THE PROVISIONS OF

THE CRIMINAL LAW AMENDMENT ACT,

14 & 15 VICT. CAP. 100.

BY J. E. DAVIS, ESQ., BARRISTER-AT-LAW.

PART I.—FELONIES.

No. I.

Simple Larceny of one article.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, feloniously did steal, take and
carry away *one coat* of the goods and chattels of C. D.

[With regard to the form of the indictment, it may be observed, that it is unnecessary to state any venue in the body of the indictment, because the county, city, or other jurisdiction named in the margin shall be taken to be the venue for all the facts stated in the body of the indictment: (14 & 15 Vict. c. 100, s. 23.) Neither is it necessary to give any addition to the defendant of rank or abode, nor to allege the value or price of the article stolen, nor to allege that the offence was committed "with force and arms," or "against the peace," because the indictment cannot be held insufficient for want of those averments: (Ibid. s. 24.) Nor, in the case of simple larceny, for which the above form is adapted, is it necessary to allege any time when the offence was committed, time not being of the essence of the offence. As, however, the prisoner is fairly entitled to know when the offence imputed to him was committed, the day ought to be stated; but any mistake in that respect cannot be taken advantage of.

With respect to what offences may be charged under this form of indictment, it may be stated that in addition to the ordinary cases of stealing, it comprises the following charges:—

1. All cases of embezzlement; and the punishment for that offence may be inflicted after a conviction on the above form: (14 & 15 Vict. c. 100, s. 13.)

2. Clerks and servants may be convicted of simple larceny under this form, but they cannot receive the higher punishment awarded by the 7 & 8 Geo. 4, c. 29, s. 46, for persons filling those situations.

- Precedents.* 3. If it turn out that the felony was not completed, but only attempted, the defendant may be convicted of a misdemeanor: (14 & 15 Vict. c. 100, s. 9.)
- 14 & 15 Vict. c. 100. 4. An accessory before the fact may be convicted under this form of indictment, and receive the same punishment as if guilty of the actual stealing: (11 & 12 Vict. c. 46, s. 1.)]
1. *Felonies.*

No. II.

Larceny of several articles.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., on the day
 , in the year of our Lord 1852, feloniously did steal, take and
 carry away *twenty yards of cloth, ten yards of cambric, ten yards of
 calico, and fifty yards of cotton print*, of the goods and chattels of C. D.

[The statute 14 & 15 Vict. c. 100, s. 17, enacts, that "if upon the trial of any indictment for larceny, it shall appear that the property alleged in such indictment to have been stolen at one time, was taken at different times, the prosecutor shall not by reason thereof be required to elect upon which taking he will proceed, unless it shall appear that there were more than three takings, or that more than the space of six calendar months elapsed between the first and the last of such takings; and, in either of such last-mentioned cases, the prosecutor shall be required to elect to proceed for such number of takings not exceeding three, as appear to have taken place within the period of six calendar months from the first to the last of such takings."]

No. III.

Larceny, where three distinct acts of stealing charged.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., on the day
 , in the year of our Lord 1852, feloniously did steal, take and
 carry away *one pair of boots* of the goods and chattels of C. D.

Second Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. afterwards and within the space of six calendar months from the act of stealing alleged in the first count, feloniously did steal, take and carry away *one spade*, the property of the said C. D.

Third Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. afterwards and within the space of six calendar months from the act of stealing alleged in the first count, feloniously did steal, take and carry away *one iron saucepan*, the property of the said C. D., against the form of the statute in such case made and provided.

[The statute 14 & 15 Vict. c. 100, s. 16, enacts, that "it shall be lawful to insert several counts in the same indictment against the same person for any number of distinct acts of stealing, not exceeding three, which may have been committed by him against the same person within the space of six calendar months from the first to the last of such acts, and to proceed thereon for all or any of them." As the 17th section of the same statute, referred to elsewhere (see the note to preceding form, No. 2), empowers a prosecutor to give evidence under one count of three distinct takings within six months of the first, it seems that there is no actual

necessity for introducing these counts. Where, however, it is clear that the takings were distinct, the same principle of fairness towards the prisoner which makes it proper to state the time of the alleged offence, should induce the prosecutor to point out by distinct counts, under this section, the offences with which the prisoner is charged.]

Precedents.

14 & 15 Vict
c. 100.

1. *Felonies.*

No. IV.

Receiving stolen goods.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, feloniously did receive *one silver watch* of the goods and chattels of C. D., before then feloniously stolen, taken and carried away, he the said A. B., at the time when he so received the said watch as aforesaid, well knowing the same to have been feloniously stolen, taken, and carried away, against the form of the statute in such case made and provided.

[By the stat. 7 & 8 Geo. 4, c. 29, s. 54, the receivers of stolen property may be tried either as accessories after the fact, or for a substantive felony.]

No. V.

Larceny, with a count for receiving, against the same Person.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, feloniously did steal, take and carry away *one pair of trousers* of the goods and chattels of C. D. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. afterwards, on the day and year aforesaid, feloniously did receive the said goods and chattels before then feloniously stolen, taken and carried away, he the said A. B., at the time he so received the said goods and chattels, well knowing them to have been feloniously stolen, taken and carried away, against the form of the statute in such case made and provided.

[The 11 & 12 Vict. c. 46, s. 3, enacts that, "in every indictment for feloniously stealing property, it shall be lawful to add a count for feloniously receiving the same property knowing it to have been stolen; and in any indictment for feloniously receiving property knowing it to have been stolen, it shall be lawful to add a count for feloniously stealing the same property; and, where any such indictment shall have been preferred and found against any person, the prosecutor shall not be put to his election, but it shall be lawful for the jury who shall try the same to find a verdict of guilty, either of stealing the property or of receiving it knowing it to have been stolen."]

- Precedents.* 3. If it turn out that the felony was not completed, but only attempted, the defendant may be convicted of a misdemeanor: (14 & 15 Vict. c. 100, s. 9.)
- 14 & 15 Vict. c. 100. 4. An accessory before the fact may be convicted under this form of indictment, and receive the same punishment as if guilty of the actual stealing: (11 & 12 Vict. c. 46, s. 1.)]
1. *Felonies.*

No. II.

Larceny of several articles.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, feloniously did steal, take and
carry away *twenty yards of cloth, ten yards of cambric, ten yards of
calico, and fifty yards of cotton print*, of the goods and chattels of C. D.

[The statute 14 & 15 Vict. c. 100, s. 17, enacts, that "if upon the trial of any indictment for larceny, it shall appear that the property alleged in such indictment to have been stolen at one time, was taken at different times, the prosecutor shall not by reason thereof be required to elect upon which taking he will proceed, unless it shall appear that there were more than three takings, or that more than the space of six calendar months elapsed between the first and the last of such takings; and, in either of such last-mentioned cases, the prosecutor shall be required to elect to proceed for such number of takings not exceeding three, as appear to have taken place within the period of six calendar months from the first to the last of such takings."]

No. III.

Larceny, where three distinct acts of stealing charged.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, feloniously did steal, take and
carry away *one pair of boots* of the goods and chattels of C. D.

Second Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. afterwards and within the space of six calendar months from the act of stealing alleged in the first count, feloniously did steal, take and carry away *one spade*, the property of the said C. D.

Third Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. afterwards and within the space of six calendar months from the act of stealing alleged in the first count, feloniously did steal, take and carry away *one iron saucepan*, the property of the said C. D., against the form of the statute in such case made and provided.

[The statute 14 & 15 Vict. c. 100, s. 16, enacts, that "it shall be lawful to insert several counts in the same indictment against the same person for any number of distinct acts of stealing, not exceeding three, which may have been committed by him against the same person within the space of six calendar months from the first to the last of such acts, and to proceed thereon for all or any of them." As the 17th section of the same statute, referred to elsewhere (see the note to preceding form, No. 2), empowers a prosecutor to give evidence under one count of three distinct takings within six months of the first, it seems that there is no actual

necessity for introducing these counts. Where, however, it is clear that the takings were distinct, the same principle of fairness towards the prisoner which makes it proper to state the time of the alleged offence, should induce the prosecutor to point out by distinct counts, under this section, the offences with which the prisoner is charged.]

Precedents.

14 & 15 Vict
c. 100.

1. *Felonies.*

No. IV.

Receiving stolen goods.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, feloniously did receive *one silver watch* of the goods and chattels of C. D., before then feloniously stolen, taken and carried away, he the said A. B., at the time when he so received the said watch as aforesaid, well knowing the same to have been feloniously stolen, taken, and carried away, against the form of the statute in such case made and provided.

[By the stat. 7 & 8 Geo. 4, c. 29, s. 54, the receivers of stolen property may be tried either as accessories after the fact, or for a substantive felony.]

No. V.

Larceny, with a count for receiving, against the same Person.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, feloniously did steal, take and carry away *one pair of trousers* of the goods and chattels of C. D. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. afterwards, on the day and year aforesaid, feloniously did receive the said goods and chattels before then feloniously stolen, taken and carried away, he the said A. B., at the time he so received the said goods and chattels, well knowing them to have been feloniously stolen, taken and carried away, against the form of the statute in such case made and provided.

[The 11 & 12 Vict. c. 46, s. 3, enacts that, "in every indictment for feloniously stealing property, it shall be lawful to add a count for feloniously receiving the same property knowing it to have been stolen; and in any indictment for feloniously receiving property knowing it to have been stolen, it shall be lawful to add a count for feloniously stealing the same property; and, where any such indictment shall have been preferred and found against any person, the prosecutor shall not be put to his election, but it shall be lawful for the jury who shall try the same to find a verdict of guilty, either of stealing the property or of receiving it knowing it to have been stolen."]

Precedents.

14 & 15 Vict.
c. 100.

1. *Felonies.*

No. VI.

Larceny against two or more.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B. and C. D., on
the day of , in the year of our Lord 1852, feloniously did
steal, take and carry away *one gun, one shot-belt and one powder flask*,
of the goods and chattels of E. F.

[In order to convict two persons on a joint indictment for larceny, it is necessary to prove a joint act of felony. For example, if the evidence showed that C. D. stole the powder-flask, and the taking of that was distinct from the taking of the other articles, with respect to which he was not a principal, the prosecutor must elect to proceed against one of the two prisoners, and the other must be acquitted.]

No. VII.

Against two Receivers.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B. and C. D., on
the day of , in the year of our Lord 1852, feloniously did
receive *one gold watch, one gold ring, and one silk purse*, of the moneys,
goods and chattels of E. F. before then feloniously stolen, taken and
carried away, they the said A. B. and C. D., at the time when they so
received the said moneys, goods and chattels as aforesaid, well knowing
the same to have been feloniously stolen, taken and carried away, against
the form of the statute in such case made and provided.

[The statute 14 & 15 Vict. c. 100, s. 14 enacts that, "if upon the trial of two or more persons indicted for jointly receiving any property, it shall be proved that one or more of such persons separately received any part of such property it shall be lawful for the jury to convict upon such indictment such of the said persons as shall be proved to have received any part of such property."]

No. VIII.

Against several, for stealing, with a count for receiving.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., C. D., and E. F.,
on the day of , in the year of our Lord 1852, feloniously did
steal, take and carry away *six tame hen fowls, six tame cock fowls, twenty tame pigeons, and four tame rabbits*, of the goods and chattels of G. H.
And the jurors aforesaid, upon their oath aforesaid, do further present,
that the said A. B., C. D., and E. F. afterwards, on the day and year
aforesaid, feloniously did receive the said goods and chattels so as afore-
said feloniously stolen, taken and carried away, they the said A. B., C. D.,

and E. F., at the time they so received the said goods and chattels, well knowing the same to have been feloniously stolen, taken and carried away, against the form of the statute in such case made and provided.

Precedents.

14 & 15 Vict.
c. 100.

1. *Felonies.*

[The statute 11 & 12 Vict. c. 46, s. 3, enacts, that if any indictment for feloniously stealing property, containing a count for feloniously receiving the same property, knowing it to have been stolen, shall have been preferred and found against two or more persons, "it shall be lawful for the jury who shall try the same, to find all or any of the said persons guilty either of stealing the property or of receiving it knowing it to have been stolen, or to find one or more of the said persons guilty of stealing the property, and the other or others of them guilty of receiving it knowing it to have been stolen." Under this section, coupled with the 14 & 15 Vict. c. 100, s. 14 (inserted in the note to the previous form), the jury may convict A. B. of stealing, and C. D. and E. F. of receiving, although the acts of receiving were separate and distinct, either in respect to the article received, or the time of receiving. But the jury cannot convict both A. B. and C. D. of *stealing*, if there was no joint act of stealing.]

No. IX.

Indictments against Principal and Accessory after the fact.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, feloniously did steal, take and
carry away *one silver tankard*, of the goods and chattels of E. F. And
the jurors aforesaid, upon their oath aforesaid, do further present, that
C. D., well knowing the said A. B. to have done and committed the said
felony as aforesaid, afterwards did feloniously receive, harbour and
maintain him the said A. B.

[The above form seems applicable, whether A.B., the principal, is or is not amenable to justice, or has been already tried, or is tried with the accessory. The statute 11 & 12 Vict. c. 46, s. 2, enacts that, "if any person shall become an accessory after the fact to any felony, whether the same be a felony at common law or by virtue of any statute or statutes made or to be made, he may be indicted and convicted either as an accessory after the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may thereupon be punished in like manner as any accessory after the fact to the same felony, if convicted may be punished." And the 14 & 15 Vict. c. 100, s. 15, enacts that any number of accessories may be charged with substantive felonies in the same indictment, notwithstanding the principal felon shall not be included in the same indictment, or shall not be in custody or amenable to justice.]

No. X.

Against Accessory after the fact, where the Principal is unknown.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that some person or persons to
the jurors aforesaid unknown, on the day of , in the year of our
Lord 1852, feloniously did steal, take and carry away *one silver tea-pot,
one silver coffee-pot, one silver cream ewer, one silver platter, and twenty-
four silver spoons*, of the goods and chattels of E. F. And the jurors

- Precedents.* aforesaid, upon their oath aforesaid, do further present, that C. D., well knowing the said person, to the jurors aforesaid unknown, to have done and committed the said felony as aforesaid, afterwards did feloniously receive, harbour and maintain the said person, to the jurors aforesaid unknown.
- 14 & 15 Vict.
c. 100.
1. *Felonies.*

[With regard to accessories *before the fact*, the statute 11 & 12 Vict. c. 46, provides that "if any person shall become an accessory before the fact to any felony, whether the same be a felony at common law or by virtue of any statute or statutes made or to be made, such person may be indicted, tried, convicted and punished in all respects as if he were a principal felon." It is, therefore, unnecessary to use any special form of indictment: (see *ante*, note to form No. I.)]

No. XI.

Larceny, after a previous conviction for Felony at the Quarter Sessions.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, feloniously did steal, take
and carry away *one engine-brass, and twenty pounds weight of brass*,
of the goods and chattels of C. D. And the jurors aforesaid, upon
their oath aforesaid, do further present, that before the committing of
the said felony, to wit, on the day of , in the year of our
Lord 18 , at the General Quarter Sessions of the Peace holden
at , in and for the county of , the said A. B. was then
and there convicted of felony, and which said conviction is still in full
force.

No. XII.

Larceny, after a previous conviction for Felony at the Assizes.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, feloniously did steal, take
and carry away *twenty pounds weight of scrap iron*, of the goods and
chattels of C. D. And the jurors aforesaid, upon their oath aforesaid,
do further present, that before the committing of the said felony, to
wit, on the day of , in the year of our Lord 18 , at the
Assizes and General Gaol Delivery, holden at , in and for the
county of , the said A. B. was then and there convicted of
felony, and which said conviction is still in full force.

[The 7 & 8 Geo. 4, c. 28, s. 11, which provides for the punishment of offenders who commit felonies after a previous conviction for felony, enacts that in any such indictment "it shall be sufficient to state that the offender was at a certain time and place convicted of felony, without otherwise describing the previous felony." As to the time and mode of proving the previous conviction see the same section, and the 14 & 15 Vict. c. 19, s. 9.]

*Precedents.*14 & 15 Vict.
c. 100.1. *Felonies.*

No. XIII.

Larceny of Money.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, feloniously did steal, take
and carry away a large sum of money, to wit, the sum of *twenty*
pounds, seventeen shillings, and eightpence, of the moneys of C. D.

["In every indictment in which it shall be necessary to make any averment as to any money or any note of the Bank of England or any other bank, it shall be sufficient to describe such money or bank note simply as money, without specifying any particular coin or bank note: and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank note, although the particular species of coin of which such amount was composed, or the particular nature of the bank note, shall not be proved." 14 & 15 Vict. c. 100, s. 18.]

No. XIV.

Larceny of a Promissory Note.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, feloniously did steal, take
and carry away *one promissory note for the payment of sixty pounds*.
the property of C. D., against the form of the statute in such case made
and provided.

No. XV.

Larceny of a Bill of Exchange.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, feloniously did steal, take
and carry away *a certain bill of exchange*, the property of C. D., against
the form of the statute in such case made and provided.

["In any indictment for forging, uttering, *stealing*, embezzling, destroying or concealing, or for obtaining by false pretences any instrument, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or *fac simile* thereof, or otherwise describing the same or the value thereof." (14 & 15 Vict. c. 100, s. 5.)]

Precedents.
 14 & 15 Vict.
 c. 100.

1. *Felonies.*

aforesaid, upon their oath aforesaid, do further present, that C. D., well knowing the said person, to the jurors aforesaid unknown, to have done and committed the said felony as aforesaid, afterwards did feloniously receive, harbour and maintain the said person, to the jurors aforesaid unknown.

[With regard to accessories *before the fact*, the statute 11 & 12 Vict. c. 46, provides that "if any person shall become an accessory before the fact to any felony, whether the same be a felony at common law or by virtue of any statute or statutes made or to be made, such person may be indicted, tried, convicted and punished in all respects as if he were a principal felon." It is, therefore, unnecessary to use any special form of indictment: (see *ante*, note to form No. I.)]

No. XI.

Larceny, after a previous conviction for Felony at the Quarter Sessions.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., on the day
 of , in the year of our Lord 1852, feloniously did steal, take
 and carry away *one engine-brass, and twenty pounds weight of brass*,
 of the goods and chattels of C. D. And the jurors aforesaid, upon
 their oath aforesaid, do further present, that before the committing of
 the said felony, to wit, on the day of , in the year of our
 Lord 18 , at the General Quarter Sessions of the Peace holden
 at , in and for the county of , the said A. B. was then
 and there convicted of felony, and which said conviction is still in full
 force.

No. XII.

Larceny, after a previous conviction for Felony at the Assizes.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., on the day
 of , in the year of our Lord 1852, feloniously did steal, take
 and carry away *twenty pounds weight of scrap iron*, of the goods and
 chattels of C. D. And the jurors aforesaid, upon their oath aforesaid,
 do further present, that before the committing of the said felony, to
 wit, on the day of , in the year of our Lord 18 , at the
 Assizes and General Gaol Delivery, holden at , in and for the
 county of , the said A. B. was then and there convicted of
 felony, and which said conviction is still in full force.

[The 7 & 8 Geo. 4, c. 28, s. 11, which provides for the punishment of offenders who commit felonies after a previous conviction for felony, enacts that in any such indictment "it shall be sufficient to state that the offender was at a certain time and place convicted of felony, without otherwise describing the previous felony." As to the time and mode of proving the previous conviction see the same section, and the 14 & 15 Vict. c. 19, s. 9.]

*Precedents.*14 & 15 Vict.
c. 100.1. *Felonies.*

No. XIII.

Larceny of Money.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., on the day
 of , in the year of our Lord 1852, feloniously did steal, take
 and carry away a large sum of money, to wit, the sum of *twenty*
pounds, seventeen shillings, and eightpence, of the moneys of C. D.

["In every indictment in which it shall be necessary to make any averment as to any money or any note of the Bank of England or any other bank, it shall be sufficient to describe such money or bank note simply as money, without specifying any particular coin or bank note; and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank note, although the particular species of coin of which such amount was composed, or the particular nature of the bank note, shall not be proved." 14 & 15 Vict. c. 100, s. 18.]

No. XIV.

Larceny of a Promissory Note.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., on the day
 of , in the year of our Lord 1852, feloniously did steal, take
 and carry away *one promissory note for the payment of sixty pounds*.
 the property of C. D., against the form of the statute in such case made
 and provided.

No. XV.

Larceny of a Bill of Exchange.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., on the day
 of , in the year of our Lord 1852, feloniously did steal, take
 and carry away a *certain bill of exchange*, the property of C. D., against
 the form of the statute in such case made and provided.

["In any indictment for forging, uttering, *stealing*, embezzling, destroying or concealing, or for obtaining by false pretences any instrument, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or *fac simile* thereof, or otherwise describing the same or the value thereof." (14 & 15 Vict. c. 100, s. 5.)]

Precedents.

14 & 15 Vict.
c. 100.

1. *Felonies.*

No. XVI.

Larceny of Cattle.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, feloniously did steal, take
and carry away *one horse*, of the goods and chattels of C. D., against
the form of the statute in such case made and provided.

[A variance between the description of the animal in the indictment and the proof in regard to gender might be amended under the statute 14 & 15 Vict. c. 100, s. 1; as for example if the horse were a mare; but the power of amendment would not extend to a variance in the species of the animal, because that would not be a variance immaterial to the merits of the case, and indeed would show the charge to be so totally distinct as not to be *the same case* for which the prisoner is indicted.]

No. XVII.

Killing Cattle, with intent to Steal.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, feloniously and wilfully did
kill *one sheep*, of the goods and chattels of C. D., with intent then
feloniously to steal, take and carry away the carcass of the said sheep,
against the form of the statute in such case made and provided.

[7 & 8 Geo. 4, c. 29, s. 25.]

No. XVIII.

Larceny of Metal fixed to a Building.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, at the parish of , in the
county of Stafford, feloniously did steal, take and carry away *one hundred
pounds weight of lead*, the property of C. D., then and there being fixed to
the dwelling-house of the said C. D. there situate, against the form of
the statute in such case made and provided.

[See the statute 7 & 8 Geo. 4, c. 29, s. 44, upon which this and the five following forms are framed. The allegation of venue cannot it seems be dispensed with, as the 23rd section of the 14 & 15 Vict. c. 100, which enacts that it shall not be necessary to state any venue in the body of any indictment, contains a proviso "that in cases where local description is or hereafter shall be required, such local description shall be given in the body of the indictment." If, however, the indictment contained no allegation of venue, the 25th section apparently applies, enacting that "every objection to any indictment for any formal defect apparent on the face thereof shall be taken by demurrer or motion to quash such indictment, before the jury shall

be sworn, and not afterwards; and every court before which any such objection shall be taken for any formal defect may, if it be thought necessary, cause the indictment to be forthwith amended in such particular by some officer of the court or other person, and thereupon the trial shall proceed as if no such defect had appeared.]

Precedents.

14 & 15 Vict.
c. 100.

1. *Felonies.*

No. XIX.

Larceny of a Fixture.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, at the parish of , in the
county of Stafford, feloniously did steal, take and carry away *one copper
furnace*, the property of C. D., then and there being fixed in the dwell-
ing-house of the said C. D. there situate, against the form of the statute
in such case made and provided.

No. XX.

Larceny of Glass belonging to a Building.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, at the parish of , in the
county of Stafford, feloniously did steal, take and carry away *one hundred
panes of glass*, the property of C. D., then and there belonging to a
certain *greenhouse*, the property of the said C. D. there situate, against
the form of the statute in such case made and provided.

No. XXI.

Larceny of Metal fixed in Land being private property.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, at the parish of , in the
county of Stafford, feloniously did steal, take and carry away *twenty iron
hurdles and one hundred yards of iron wire*, the property of C. D., then
and there fixed in certain land, being private property, to wit, in a field,
the property of the said C. D. there situate, against the form of the
statute in such case made and provided.

Precedents.

14 & 15 Vict.
c. 100.

No. XXII.

Larceny of Metal fixed in a Place dedicated to Public Use.

1. *Felonies.*

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, at the parish of , in the
county of Stafford, feloniously did steal, take and carry away *twenty iron
rails, ten iron posts, and five hundred pounds weight of iron*, then and
there being fixed in a certain street there, called street, there
situate, the same being then a place dedicated to the public use, against
the form of the statute in such case made and provided.

No. XXIII.

Cutting with intent to steal Lead fixed to a Building.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, at the parish of , in
the county of Stafford, feloniously did rip, cut and break *one hundred
pounds weight of lead*, the property of C. D., then and there being fixed
to the dwelling-house of the said C. D. there situate, with intent then
and there feloniously to steal, take, and carry away the said lead, against
the form of the statute in such case made and provided.

[This form can be readily adapted to the other cases of cutting with intent to steal property, comprised in the statute 7 & 8 Geo. 4, c. 29, s. 44, and for the larceny of which the preceding forms are applicable.]

No. XXIV.

Stealing Ore from a Mine.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, at the parish of , in the
county of Stafford, feloniously did steal, take and carry away *fifty pounds
weight of iron ore*, the property of C. D., from an iron mine of the said
C. D. then and there situate, against the form of the statute in such case
made and provided.

No. XXV.

Severing Ore from a Mine, with intent to steal.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, at the parish of , in the
county of , feloniously did sever *one hundred pounds weight of*
iron ore, the property of C. D., from an iron mine of the said C. D.
then and there situate, with intent then and there feloniously to steal,
take and carry away the same.

[See the statute 7 & 8 Geo. 4, c. 20, s. 37.]

Precedents

14 & 15 Vict.
a. 100.

1. *Felonies.*

No. XXVI.

Stealing Fabrics in the process of manufacture.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, at the parish of , in the
county of Stafford, feloniously did steal, take and carry away *fifty yards*
of flannel, of the goods and chattels of C. D., then and there placed in
a certain field of the said C. D. there situate, and whilst the same were
placed in the said field during a certain stage, process, and progress of
manufacture, against the form of the statute in such case made and
provided.

[See the statute 7 & 8 Geo. 4, c. 29, s. 16.]

No. XXVII.

Stealing Trees in an Orchard, &c.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, at the parish of , in the
county of Stafford, feloniously did steal, take and carry away *one pear*
tree, of a value exceeding one pound, to wit, of the value of two pounds,
the property of C. D., then and there growing in a certain orchard of
the said C. D. there situate, against the form of the statute in such case
made and provided.

Precedents.

14 & 15 Vict.
c. 100.

No. XXVIII.

*Stealing a Tree above the value of Five Pounds.*1. *Felonies.*

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, at the parish of , in the
county of Stafford, feloniously did steal, take and carry away *one oak tree*, of a value exceeding five pounds, the property of C. D. then and there growing, against the form of the statute in such case made and provided.

No. XXIX.

Damaging Trees, with intent to steal.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, at the parish of , in the
county of Stafford, feloniously did cut, break, root up and destroy *one apple tree*, the property of C. D., then and there growing in a certain *orchard* of the said C. D. there situate, with intent then and there feloniously to steal, take and carry away the same, thereby then and there doing injury to the said C. D., to an amount exceeding the sum of one pound, to wit, to the amount of two pounds, against the form of the statute in such case made and provided.

[With respect to this and the two preceding forms, see the statute 7 & 8 Geo. 4, c. 29, s. 38. Local description is necessary to be stated in at least two of these cases, and the value or damage in all, as they are of the essence of the offence: (Lord Campbell's Acts by Greaves, p. 81.)]

No. XXX.

Stealing Letters.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, being then a person employed
by and under the Post-office of the United Kingdom, did feloniously steal,
take and carry away *one post letter*, the property of the Post-master
General, against the form of the statute in such case made and provided.

[The great majority of prosecuted offences against the Post-office involve a charge of stealing money, rendering the offender liable to transportation for life, and over whom, consequently, a Court of Quarter Sessions has no jurisdiction. The above offence is in itself punishable by transportation for seven years, or imprisonment not exceeding three years: (see statute 7 Will. 4 & 1 Vict. c. 36, s. 26.)]

No. XXXI.

Larceny of Money by a Clerk or Servant.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, being then clerk to C. D., and
while he was such servant feloniously did steal, take and carry away
certain money, to wit, the sum of *five pounds* belonging to the said C. D.
his master, against the form of the statute in such case made and pro-
vided.

[See the statute 7 & 8 Geo. 4, c. 29, s. 46.]

Precedents.

14 & 15 Vict.
c. 100.

1. *Felonies.*

No. XXXII.

Larceny by a Clerk or Servant, where three distinct acts of stealing are charged.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, being then servant to C. D., and
while he was such servant, feloniously did steal, take and carry away
certain money, to wit, the sum of *ten shillings*, belonging to the said
C. D. his master, against the form of the statute in such case made and
provided.

Second Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. afterwards, and within the space of six calendar months from the act of stealing alleged in the first count, being then servant to the said C. D., and while he was such servant feloniously did steal, take and carry away *two silver tablespoons*, belonging to the said C. D. his master, against the form of the statute in such case made and provided.

Third Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. afterwards, and within the space of six calendar months from the act of stealing alleged in the first count, being then servant to the said C. D., and while he was such servant, feloniously did steal, take and carry away *twelve bottles of port wine, twelve bottles of sherry wine, twenty-four quarts of wine, and twelve glass wine bottles*, belonging to the said C. D. his master, against the form of the statute in such case made and provided.

[See section 16 of the 14 & 15 Vict. c. 100, *ante*, note to form No. III. If there is any doubt as to whether the defendant was the servant of the prosecutor, a count for simple larceny may be added.]

Precedents.

14 & 15 Vict.
c. 100.

No. XXXIII.

*Embezzlement by a Clerk.*1. *Felonies.*

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, being then clerk to C. D., did,
by virtue of his said employment, while he was so employed as aforesaid,
receive and take into his possession certain money, to wit, the sum of
twenty pounds, for the said C. D., his master, and then fraudulently and
feloniously did embezzle the same. And so the jurors aforesaid, upon their
oath aforesaid, do say that the said A. B. then in manner and form
aforesaid, feloniously did steal, take, and carry away the said money, the
property of the said C. D. his master, from the said C. D. his master,
against the form of the statute in such case made and provided.

No. XXXIV.

Embezzlement by a Servant, alleging three distinct Acts.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, being then servant to C. D.,
did, by virtue of his said employment, and while he was so employed as
aforesaid, receive and take into his possession certain money, to wit, the
sum of *ten shillings*, for the said C. D., his master, and then fraudulently
and feloniously did embezzle the same. And so the jurors aforesaid,
upon their oath aforesaid, do say that the said A. B. then in manner
and form aforesaid, feloniously did steal, take and carry away the said
money, the property of the said C. D. his master, from the said C. D.
his master, against the form of the statute in such case made and
provided.

Second Count.—And the jurors aforesaid, upon their oath aforesaid,
do further present, that the said A. B. afterwards, to wit, on the day
of , in the year aforesaid, being then servant to the said C. D.,
did, by virtue of his said last-mentioned employment, and while he was
so employed as last aforesaid, receive and take into his possession certain
other money, to wit, the sum of *five pounds*, for the said C. D. his
master, and that the said A. B. afterwards, and within six calendar
months from the time of the committing of the said offence in the said
first count mentioned, to wit, on the day and year last aforesaid,
fraudulently and feloniously did embezzle the same. And so the jurors
aforesaid, upon their oath aforesaid, do say that the said A. B., in
manner and form last aforesaid, feloniously did steal, take and carry
away the said last-mentioned money, the property of the said C. D. his
master, from the said C. D. his master, against the form of the statute
in such case made and provided.

Third Count.—And the jurors aforesaid, upon their oath aforesaid, do
further present, that the said A. B. afterwards, to wit, on the day
of , in the year aforesaid, being servant to the said C. D., did, by

virtue of his said last-mentioned employment, and while he was so employed as last aforesaid, receive and take into his possession certain other money, to wit, the *sum of two pounds thirteen shillings and sixpence* for the said C. D. his master, and that the said A. B. afterwards, and within six calendar months from the time of the committing of the said offence in the said first count mentioned, to wit, on the day and year last aforesaid, fraudulently and feloniously did embezzle the same. And so the jurors aforesaid, upon their oath aforesaid, do say that the said A. B., in manner and form last aforesaid, feloniously did steal, take and carry away the said last-mentioned money, the property of the said C. D. his master, from the said C. D. his master, against the form of the statute in such case made and provided.

Precedents.

14 & 15 Vict.
c. 100.

1. *Felonies.*

[Indictments for embezzlement are founded on the stat. 7 & 8 Geo. 4, c. 29, s. 47, which enacts, that "if any clerk or servant, or any person employed for the purpose or in the capacity of a clerk or servant, shall, by virtue of such employment, receive or take into his possession any chattel, money, or valuable security for or in the name or on the account of his master, and shall fraudulently embezzle the same or any part thereof, every such offender shall be deemed to have feloniously stolen the same from his master, although such chattel, money, or security was not received into the possession of such master otherwise than by the actual possession of his clerk, servant, or other person so employed."

The 48th section of the same statute empowers three distinct acts of embezzlement against the same master, committed within the space of six calendar months from the first to the last, to be charged in the same indictment, and also enacts that "in every such indictment, except where the offence shall relate to any chattel, it shall be sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security; and such allegation, so far as regards the description of the property, shall be sustained, if the offender shall be proved to have embezzled any amount, although the particular species of coin or valuable security of which such amount was composed shall not be proved; or if he shall be proved to have embezzled any piece of coin or valuable security, or any portion of the value thereof, although such piece of coin or valuable security may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, and such part shall have been returned accordingly." It will be seen, therefore, that no very material alteration with reference to framing indictments for embezzlement is introduced by the 18th section of the recent statute: (14 & 15 Vict. c. 100; see note to form, No. XIII.) The latter part of that section does, however, extend in one particular point the 48th section of the 7 & 8 Geo. 4, c. 29, for it enacts, that the general description of money shall be sustained by proof that the offender embezzled "any piece of coin or any bank note, or any portion of the value thereof, although such piece of coin or bank note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, or to any other person, and such part shall have been returned accordingly." The words, "or to any other person," were introduced to meet the case where a person embezzled a note or coin after having returned part of its value to a different person from the person from whom he received it, the 7 & 8 Geo. 4, c. 29, s. 48, only applying to the case where part of the value was returned "to the party delivering" the note or coin to the prisoner: (see Lord Campbell's Acts, by Greaves, p. 21.)

The statute 14 & 15 Vict. c. 100, does, however, contain a clause which appears to render it unnecessary, in any case of embezzlement, to adopt the ordinary forms of indictment, which it must be admitted, seems unnecessarily prolix and cumbersome. The 13th section of that statute enacts that, if upon the trial of any person indicted for embezzlement, as a clerk, servant, or person employed for the purpose, or in the capacity of a clerk or servant, it shall be proved that he took the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of embezzlement, but is guilty of simple larceny, or of larceny, as a clerk, servant, or person employed for the purpose or in the capacity of a clerk or servant as the case may be, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such larceny; and if, upon the trial of any person indicted for larceny, it shall be proved that he took the property in question in any such manner as to amount in law to embezzlement, he shall not, by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of larceny, but is guilty of embezzlement, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such embezzlement; and no person so tried for embezzlement or larceny as aforesaid, shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts."

Precedents.

14 & 15 Vict.
c. 100.

No. XXXIII.

*Embezzlement by a Clerk.*1. *Felonies.*

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, being then clerk to C. D., did,
by virtue of his said employment, while he was so employed as aforesaid,
receive and take into his possession certain money, to wit, the sum of
twenty pounds, for the said C. D., his master, and then fraudulently and
feloniously did embezzle the same. And so the jurors aforesaid, upon their
oath aforesaid, do say that the said A. B. then in manner and form
aforesaid, feloniously did steal, take, and carry away the said money, the
property of the said C. D. his master, from the said C. D. his master,
against the form of the statute in such case made and provided.

No. XXXIV.

Embezzlement by a Servant, alleging three distinct Acts.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, being then servant to C. D.,
did, by virtue of his said employment, and while he was so employed as
aforesaid, receive and take into his possession certain money, to wit, the
sum of *ten shillings*, for the said C. D., his master, and then fraudulently
and feloniously did embezzle the same. And so the jurors aforesaid,
upon their oath aforesaid, do say that the said A. B. then in manner
and form aforesaid, feloniously did steal, take and carry away the said
money, the property of the said C. D. his master, from the said C. D.
his master, against the form of the statute in such case made and
provided.

Second Count.—And the jurors aforesaid, upon their oath aforesaid,
do further present, that the said A. B. afterwards, to wit, on the day
of , in the year aforesaid, being then servant to the said C. D.,
did, by virtue of his said last-mentioned employment, and while he was
so employed as last aforesaid, receive and take into his possession certain
other money, to wit, the sum of *five pounds*, for the said C. D. his
master, and that the said A. B. afterwards, and within six calendar
months from the time of the committing of the said offence in the said
first count mentioned, to wit, on the day and year last aforesaid,
fraudulently and feloniously did embezzle the same. And so the jurors
aforesaid, upon their oath aforesaid, do say that the said A. B., in
manner and form last aforesaid, feloniously did steal, take and carry
away the said last-mentioned money, the property of the said C. D. his
master, from the said C. D. his master, against the form of the statute
in such case made and provided.

Third Count.—And the jurors aforesaid, upon their oath aforesaid, do
further present, that the said A. B. afterwards, to wit, on the day
of , in the year aforesaid, being servant to the said C. D., did, by

virtue of his said last-mentioned employment, and while he was so employed as last aforesaid, receive and take into his possession certain other money, to wit, the *sum of two pounds thirteen shillings and sixpence* for the said C. D. his master, and that the said A. B. afterwards, and within six calendar months from the time of the committing of the said offence in the said first count mentioned, to wit, on the day and year last aforesaid, fraudulently and feloniously did embezzle the same. And so the jurors aforesaid, upon their oath aforesaid, do say that the said A. B., in manner and form last aforesaid, feloniously did steal, take and carry away the said last-mentioned money, the property of the said C. D. his master, from the said C. D. his master, against the form of the statute in such case made and provided.

Precedents.

14 & 15 Vict.
c. 100.

1. *Felonies.*

[Indictments for embezzlement are founded on the stat. 7 & 8 Geo. 4, c. 29, s. 47, which enacts, that "if any clerk or servant, or any person employed for the purpose or in the capacity of a clerk or servant, shall, by virtue of such employment, receive or take into his possession any chattel, money, or valuable security for or in the name or on the account of his master, and shall fraudulently embezzle the same or any part thereof, every such offender shall be deemed to have feloniously stolen the same from his master, although such chattel, money, or security was not received into the possession of such master otherwise than by the actual possession of his clerk, servant, or other person so employed."

The 48th section of the same statute empowers three distinct acts of embezzlement against the same master, committed within the space of six calendar months from the first to the last, to be charged in the same indictment, and also enacts that "in every such indictment, except where the offence shall relate to any chattel, it shall be sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security; and such allegation, so far as regards the description of the property, shall be sustained, if the offender shall be proved to have embezzled any amount, although the particular species of coin or valuable security of which such amount was composed shall not be proved; or if he shall be proved to have embezzled any piece of coin or valuable security, or any portion of the value thereof, although such piece of coin or valuable security may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, and such part shall have been returned accordingly." It will be seen, therefore, that no very material alteration with reference to framing indictments for embezzlement is introduced by the 18th section of the recent statute: (14 & 15 Vict. c. 100; see note to form, No. XIII.) The latter part of that section does, however, extend in one particular point the 48th section of the 7 & 8 Geo. 4, c. 29, for it enacts, that the general description of money shall be sustained by proof that the offender embezzled "any piece of coin or any bank note, or any portion of the value thereof, although such piece of coin or bank note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, or to any other person, and such part shall have been returned accordingly." The words, "or to any other person," were introduced to meet the case where a person embezzled a note or coin after having returned part of its value to a different person from the person from whom he received it, the 7 & 8 Geo. 4, c. 29, s. 48, only applying to the case where part of the value was returned "to the party delivering" the note or coin to the prisoner: (see Lord Campbell's Acts, by Greaves, p. 21.)

The statute 14 & 15 Vict. c. 100, does, however, contain a clause which appears to render it unnecessary, in any case of embezzlement, to adopt the ordinary forms of indictment, which it must be admitted, seems unnecessarily prolix and cumbersome. The 13th section of that statute enacts that, if upon the trial of any person indicted for embezzlement, as a clerk, servant, or person employed for the purpose, or in the capacity of a clerk or servant, it shall be proved that he took the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of embezzlement, but is guilty of simple larceny, or of larceny, as a clerk, servant, or person employed for the purpose or in the capacity of a clerk or servant as the case may be, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such larceny; and if, upon the trial of any person indicted for larceny, it shall be proved that he took the property in question in any such manner as to amount in law to embezzlement, he shall not, by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of larceny, but is guilty of embezzlement, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such embezzlement; and no person so tried for embezzlement or larceny as aforesaid, shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts."

*Precedents.*14 & 15 Vict.
c. 100.1. *Felonies.*

The latter part of this section, coupled with the 16th section, which empowers the insertion in one indictment of three distinct charges of larceny (see *ante*, note to form No. III.), is analogy to the law in cases of embezzlement under the 48th section of the 7 & 8 Geo. 4, c. 29, supercedes the necessity for adopting the ordinary form in charges of embezzlement. It could not be objected that the use of the common form of indictment for larceny is calculated to mislead the accused party in any way; for the distinction between the two offences is purely technical. Indeed it had never been decided, before the passing of the 14 & 15 Vict. c. 100, that a defendant could not be convicted of embezzlement on an indictment for simple larceny, inasmuch as the 47th section of the 7 & 8 Geo. 4, enacts, as already set out, that every person guilty of embezzling any property, "shall be deemed to have feloniously stolen the same," which, as observed by Mr. Greaves, would seem well to have warranted a conviction for embezzlement, upon a count for larceny as a servant: (Lord Campbell's Acts, by Greaves, p. 17.)

In those cases, therefore, where the offence is clearly embezzlement, it is sufficient, and simpler, and, consequently, the proper course, to indict the offender as for a simple larceny, adopting the form with one, two, or three counts, as the facts may warrant. And *à fortiori*, this is the proper course where there is any doubt as to whether the offence be simple larceny or embezzlement.]

No. XXXV

Housebreaking.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, at the parish of , in
the county of Stafford, feloniously did break and enter the dwelling-
house of C. D. there situate, and then and there in the said dwelling-
house, feloniously did steal, take and carry away *twelve china dishes,*
twelve silver forks, twenty-four china plates, and twelve silver spoons,
to the value, in the whole, of five pounds and more, of the goods and
chattels of the said C. D., against the form of the statute in such case
made and provided.

[7 & 8 Geo. 4, c. 29, s. 12; 7 Will. 4 & 1 Vict. c. 90, s. 1. The advantage of alleging the value of the articles stolen to be five pounds, is, that, if the evidence is insufficient to convict the defendant of the breaking and entering, he may be convicted of and punished for the offence of stealing in a dwelling-house to the amount of five pounds (see form, No. XXXVI, *infra*, and Lord Campbell's Acts, by Greaves, p. 87); but, without the allegation of value, he may be convicted and punished as for simple larceny.]

No. XXXVI.

Stealing in a Dwelling-house to the amount of Five Pounds.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, at the parish of , in
the county of Stafford, in the dwelling-house of C. D. there situate,
feloniously did steal, take and carry away *one silver cup, of the value*
of two pounds, and a large sum of money, to wit, the sum of ten
pounds, to the value, in the whole, of five pounds and more, of the

goods and chattels of C. D., against the form of the statute in such case made and provided.

Precedents.

14 & 15 Vict.
c. 100.

[See 7 & 8 Geo. 4, c. 29, s. 12; 7 Will. 4 & 1 Vict. c. 90, s. 1. If the defendant is not proved to have committed the statutable offence, he may be convicted of simple larceny.]

1. *Felonies.*

No. XXXVII.

Breaking and entering a Building within the Curtilage.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, at the parish of , in
the county of Stafford, feloniously did break and enter a certain
building of C. D., there situate (the said building then and there
being within the curtilage of the dwelling-house of the said C. D. there
situate, and by the said C. D. then and there occupied therewith,
and there not being any communication between the said building
and the said dwelling-house, either immediate, or by means of a covered
and enclosed passage, leading from the one to the other), and that the
said A. B. then and there, in the said building, feloniously did steal,
take, and carry away *fifty cheeses, five hundred pounds weight of cheese,
fifty pounds weight of butter, four tubs, and four wooden pails*, of the
goods and chattels of the said C. D., then and there being found, against
the form of the statute in such case made and provided.

[See statute 7 & 8 Geo. 4, c. 29, s. 14, and 7 Will. 4 & 1 Vict. c. 90, s. 2. If there is any doubt as to whether the building broken into formed part of the dwelling-house, this count should be added to the count for housebreaking, form No. XXXV.]

No. XXXVIII.

Breaking and entering a Shop.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, at the parish of , in the
county of Stafford, feloniously did break and enter the shop of C. D.,
there situate, and then and there, in the said shop, feloniously did steal,
take and carry away *fifty pieces of linen cloth, fifty pieces of cotton
print, five hundred yards of calico, one hundred yards of flannel, fifty
table cloths, one thousand yards of ribbon, fifty yards of lace, five
hundred handkerchiefs, fifty shawls, one hundred pair of gloves, and
one hundred pair of stockings*, of the goods and chattels of C. D., then
and there being found, against the form of the statue in such case made
and provided.

Precedents.

14 & 15 Vict.
c. 100.

No. XXXIX.

*Stealing from the Person.*1. *Felonies.*

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, feloniously did steal, take and
carry away *one gold watch, one purse, one pocket-book, and ten pounds*
and twelve shillings in money, of the goods, chattels, and moneys of C. D.,
from the person of the said C. D., against the form of the statute in
such case made and provided.

[See 7 Will. 4 & 1 Vict. c. 87, s. 5. If the evidence fails to prove the actual larceny, the defendant may be convicted of an attempt to steal, 14 & 15 Vict. c. 100, s. 11.]

No. XL.

Robbery.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, feloniously did make an assault
in and upon one C. D., and then feloniously did put him the said C. D.
in bodily fear and danger of his life, and then feloniously and violently
did steal, take and carry away *one gold watch and one silver snuff-box*,
of the goods and chattels of the said C. D. from the person and against
the will of the said C. D., against the form of the statute in such case
made and provided.

[7 Will. 4 & 1 Vict. c. 87, s. 5. The defendant may be convicted of stealing from the person if the evidence fails to prove the force; and the 14 & 15 Vict. c. 100, s. 11, enacts that, "if upon the trial of any person upon any indictment for robbery, it shall appear to the jury upon the evidence that the defendant did not commit the crime of robbery, but that he did commit an assault with intent to rob, the defendant shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is guilty of an assault with intent to rob, and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for feloniously assaulting with intent to rob."

Where, however, it is clearly ascertained that no actual robbery was effected, the offender should be indicted for the assault with intent to rob, as in the next form, on the general principle that every indictment should be framed to meet the substantial charge.]

No. XLI.

Assault with intent to rob.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, feloniously did make an assault
in and upon C. D., with intent then feloniously and violently to steal,
take and carry away the moneys, goods and chattels of the said C. D.,

from the person and against the will of him the said C. D., against the form of the statute in such case made and provided.

[See the statute 7 Will. 4 & 1 Vict. c. 87, s. 6, and note to last form, No. XL.]

Precedents.

14 & 15 Vict.
c. 100.

1. *Felonies.*

No. XLII.

Demanding Money with menaces.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, with menaces feloniously did
demand of C. D. the moneys of him the said C. D., with intent then
feloniously to steal, take and carry away the said moneys from the said
C. D., against the form of the statute in such case made and provided.

No. XLIII.

Demanding Property by force.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, by force did feloniously demand
of C. D. the moneys, goods and chattels of him the said C. D., with
intent then feloniously to steal, take and carry away the said moneys,
goods and chattels from the said C. D., against the form of the statute in
such case made and provided.

[See stat. 7 Will. 4 & 1 Vict. c. 87, s. 7.]

No. XLIV.

Malicious Injuries to Animals.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, unlawfully, maliciously and
feloniously did wound a certain *mare*, the property of C. D., against the
form of the statute in such case made and provided.

[See the statute 7 & 8 Geo. 4, c. 30, ss. 16 and 25. See also 1 Vict. c. 90, s. 2, and 9 & 10 Vict. c. 24, s. 1.]

Precedents.

14 & 15 Vict.
c. 100.

No. XLV.

*Destroying Trees in an Orchard, &c.*1. *Felonies.*

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord, 1852, unlawfully, maliciously and
feloniously did *cut and destroy a pear tree* of C. D., then growing in
a certain *orchard* of the said C. D., situate in the parish of , in
the county of Stafford, thereby doing injury to the said C. D. to an
amount exceeding the sum of one pound, to wit, to the amount of
two pounds, against the form of the statute in such case made and
provided.

[See the statute 7 & 8 Geo. 4, c. 80, s. 19. If the circumstances justify it, a count may be added for cutting, with intent to steal, under the 7 & 8 Geo. 4, c. 29, s. 38. See form No. XXIX.]

No. XLVI.

Destroying Trees above the value of Five Pounds.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, unlawfully, maliciously and
feloniously did *cut and destroy twenty oak trees* of C. D., then growing
at , in the parish of , in the county of Stafford, thereby
doing injury to the said C. D. to an amount exceeding the sum of five
pounds, to wit, to the value of six pounds, against the form of the statute
in such case made and provided.

[See the statute 7 & 8 Geo. 4, c. 30, s. 19.]

No. XLVII.

Drowning a Mine.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, unlawfully, maliciously and
feloniously did *cause a large quantity of water to be conveyed into a
certain mine* of C. D., situate in the parish of , in the county of
Stafford, with intent thereby then to damage the said mine, and to hinder
and destroy the working thereof, against the form of the statute in such
case made and provided.

[See the statute 7 & 8 Geo. 4, c. 30, s. 6.]

No. XLVIII.

Obstructing Airway of a Mine.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, unlawfully, maliciously and
feloniously did *fill up and obstruct a certain airway of and belonging to
a certain mine* of C. D., situate in the parish of , in the county of
Stafford, with intent thereby to damage the said mine, and to hinder and
destroy the working thereof, against the form of the statute in such case
made and provided.

[See the statute 7 & 8 Geo. 4, c. 30, s. 6.]

Precedents.

14 & 15 Vict.
c. 100.

1. *Felonies.*

No. XLIX.

Destroying a Steam Engine for working a Mine.

STAFFORDSHIRE, } THE jurors for our Lady the Queen, upon their
to wit. } oath present, that A. B., on the day
of in the year of our Lord 1852, unlawfully, maliciously and
feloniously did *pull down and destroy a certain steam engine of C. D. for
working a certain mine* of the said C. D., situate in the parish of ,
in the county of Stafford, against the form of the statute in such case
made and provided.

[See the statute 7 & 8 Geo. 4, c. 30, s. 6.]

No. L.

Damaging with intent to destroy, a Steam Engine for working a Mine.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, unlawfully, maliciously and
feloniously did *damage a certain steam engine of C. D. for working a
certain mine* of the said C. D., situate in the parish of , in the
county of Stafford, with intent then and thereby to destroy and render
useless the said steam engine, against the form of the statute in such case
made and provided.

[See the statute 7 & 8 Geo. 4, c. 30, s. 6.]

Precedents.

14 & 15 Vict.
a. 100.

No. LI.

*Destroying Threshing Machines.*1. *Felonies.*

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, unlawfully, maliciously and
feloniously did *cut, break and destroy a certain threshing machine*, the
property of C. D., against the form of the statute in such case made and
provided.

[See the statute 7 & 8 Geo. 4, c. 30, s. 4.]

No. LII.

Damaging, with intent to destroy, Threshing Machines.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, unlawfully, maliciously and
feloniously did *damage, with intent to destroy and render useless, a certain
threshing machine*, the property of C. D., against the form of the statute
in such case made and provided.

[See the statute 7 & 8 Geo. 4, c. 30, s. 4.]

No. LIII.

Removing Piles used to secure the banks of a Canal.

STAFFORDSHIRE } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, unlawfully, maliciously and
feloniously did cut off and remove certain piles situate in the parish
of in the county of Stafford, then and there fixed in the ground,
and then and there used for securing the bank of a certain canal called
the canal there situate and being, against the form of the statute
in such case made and provided.

[See the statute 7 & 8 Geo. 4, c. 30, s. 12.]

No. LIV.

Drawing up Floodgate of a Canal.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of in the year of our Lord 1852, unlawfully, maliciously and
feloniously did open and draw up a certain floodgate, situate in the parish
of , in the county of Stafford, of and belonging to a certain canal
called the canal, then being, with intent to obstruct and prevent
the carrying on and maintaining the navigation of the said canal; and
by means thereof the carrying on and maintaining the navigation of the
said river were then obstructed and prevented, against the form of the
statute in such case made and provided.

[See the statute 7 & 8 Geo. 4, c. 30, s. 12.]

Precedents.

14 & 15 Vict.
c. 100.

1. *Felonies.*

No. LV.

Setting fire to Goods in a Railway Warehouse.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1852, wilfully, maliciously and
feloniously did set fire to a *bale of cotton* then being in a certain ware-
house, situate in the parish of , in the county of Stafford, belong-
ing and appertaining to a certain *railway then and there being, called the*
London and North Western Railway, the property of the London and
North Western Railway Company, against the form of the statute in
such case made and provided.

[The statute 14 & 15 Vict. c. 19, s. 8, enacts, "that if any person shall wilfully and maliciously set fire to any station, engine-house, warehouse, or other building belonging or appertaining to any railway, dock, canal, or other navigation, every such person shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the court, to be transported beyond the seas for the term of his natural life, or for any term not less than seven years, or to be imprisoned, with or without hard labour, for any term not exceeding three years; and if any person shall wilfully and maliciously set fire to any goods or chattels being in any building, the setting fire to which is made felony by this or any other act of Parliament, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding ten years, nor less than seven years, or to be imprisoned, with or without hard labour, for any term not exceeding three years." An offence under the first part of this section is not triable at Quarter Sessions.]

PART II.—MISDEMEANORS.

§ 1. OFFENCES AGAINST THE PERSON.

No. I.

Common Assault.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., on the day
 of , in the year of our Lord 1853, unlawfully did make an assault
 upon one C. D., and did then unlawfully beat and ill-treat him.

[An assault is a misdemeanor at common law. By the statute 14 & 15 Vict. c. 55, s. 3, persons bound by recognizance to prosecute or give evidence on bills of indictment for common assaults, may, at the discretion of the court, be allowed costs as in cases of felony. It may be stated here, with reference to all misdemeanors, that the statute 14 & 15 Vict. c. 100, s. 26, enacts, that "so much of a certain act of Parliament passed in the sixtieth year of the reign of His late Majesty King George the Third, intituled *An Act to prevent Delay in the Administration of Justice in cases of Misdemeanor*, as provides that where any person shall be prosecuted for any misdemeanor by indictment at any session of the peace, session of oyer and terminer, great session, or session of gaol delivery, within that part of Great Britain called England, or in Ireland, having been committed to custody or held to bail to appear to answer for such offence twenty days at the least before the session at which such indictment shall be found, he or she shall plead to such indictment, and trial shall proceed thereupon at such same session of the peace, session of oyer and terminer, great session, or session of gaol delivery respectively, unless a writ of certiorari for removing such indictment into His Majesty's Court of King's Bench at Westminster or in Dublin shall be delivered at such session before the jury shall be sworn for such trial, shall be and the same is hereby repealed;" and by sect. 27 it is enacted that "no person prosecuted shall be entitled to traverse or postpone the trial of any indictment found against him at any session of the peace, session of oyer and terminer, or session of gaol delivery: provided always, that if the court, upon the application of the person so indicted or otherwise, shall be of opinion that he ought to be allowed a further time, either to prepare for his defence or otherwise, such court may adjourn the trial of such person to the next subsequent session, upon such terms as to bail or otherwise as to such court shall seem meet, and may respite the recognizances of the prosecutor and witnesses accordingly, in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence at such subsequent session without entering into any fresh recognizance for that purpose."

Mr. Greaves observes that "this section is intended wholly to do away with traverses, which were found to occasion much injustice. A malicious prosecutor could formerly get a bill for any frivolous assault found by the grand jury, and cause the defendant to be apprehended during the sitting of the court; and then he was obliged to traverse till the next sessions or assizes, as he could not compel the prosecutor to try the case at the sessions or assizes at which the bill was found. This led to the expense of the traverse book and sundry fees, which operated as a great hardship on the defendant, not unfrequently an innocent person. Again, the defendant, in many instances, has been able to turn his right to traverse into a means of improperly putting the prosecutor to expense and inconvenience. The intention of this section is to abolish traverses altogether, and to put misdemeanors precisely on the same footing in this respect as felonies. In felonies the prisoner has no right to postpone his trial, but the court, on proper grounds, will always postpone the trial. Under this section, therefore, no defendant in a case of misdemeanor can insist on postponing his trial; but the court in any case, upon proper grounds being adduced, not only may, but ought to order the trial to be postponed. If, therefore, a witness be absent, or ill, or there has not been reasonably sufficient time for the defendant to prepare for his defence, or there exists any other ground for believing that the ends of justice will be better answered by the trial taking place at a future period, the court would exercise a very sound discretion in postponing the trial accordingly. As the intention of the clause is to abolish traverses altogether, no traverse books, or fees incident to traverses, ought hereafter to

be allowed. One great object was to prevent defendants being improperly saddled with costs, and all courts *ought* to carry that object into effect as far as practicable. In any case, therefore, where the court thinks proper to postpone the trial, the court ought simply to order the trial to be postponed to the next sessions or assizes, as the case may be. The indictment ought then to remain in the proper custody, and no record or traverse book should be drawn up. At the next assizes or sessions, as the case may be, the trial may take place upon the indictment alone, precisely in the same way as in the case of felony where the trial has been postponed." (Lord Campbell's Acts, by C. S. Greaves, Esq., Q. C., p. 30.)]

Precedents.

2. Misdemeanors

No. II.

Common Assault against two or more.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B. and C. D. on the
day of , in the year of our Lord, 1853, unlawfully did assault
one E. F., and did then unlawfully beat, wound and ill-treat him.

No. III.

Assault and False Imprisonment, with a Count for a Common Assault.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully assaulted one C. D.,
and then unlawfully imprisoned and detained in prison the said C. D. for
a long space of time, against his will, and without any legal authority or
justifiable cause whatsoever.

Second Count.—And the jurors aforesaid, upon their oath aforesaid, do
further present, that the said A. B. afterwards, to wit, on the day and
year aforesaid, unlawfully did assault, beat, wound and ill-treat the said
C. D.

[False imprisonment is a misdemeanor at common law. The advantage of the second count is that the defendant may be convicted if the evidence proves an unjustifiable assault, but fails to establish the false imprisonment.]

No. IV.

Riot and Assault, with a Count for a Common Assault.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., C. D., and E. F.,
together with divers other evil-disposed persons, to the jurors aforesaid
unknown, on the day of , in the year of our Lord 1853,
unlawfully, riotously and routously did assemble and gather together to
disturb the peace of our said Lady the Queen; and being so then

Precedents. assembled did then unlawfully, riotously and routously assault, beat, wound and ill-treat one G. H.

2. Misdemeanors *Second Count.*—And the jurors aforesaid, upon their oath aforesaid, do further present that the said A. B., C. D. and E. F. afterwards, to wit, on the day and year aforesaid, did assault, beat, wound and ill-treat the said G. H.

[A riot is a misdemeanor at common law. In order to convict on the first count, it must be proved that at least three persons were engaged in the offence. If the evidence fails in this or any other respect to establish a riot, the defendants, or any of them, may be convicted of a common assault under the second count. If the evidence warrants it, either of the following counts, under the 14 & 15 Vict. c. 100, s. 29, may be used in addition to or instead of the count for a common assault, so as to enable the court to sentence the defendant to hard labour, if acquitted of the riot. If convicted of the riot, hard labour may be imposed, under the statute 3 Geo. 4, c. 114.]

No. V.

Assault occasioning actual bodily harm.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully did make an assault
upon one C. D., and did then unlawfully beat, wound, and ill-treat the said
C. D., and did thereby then occasion actual bodily harm to the said C. D.,
against the form of the statute in such case made and provided.

[The 14 & 15 Vict. c. 100, s. 29, enacts that "whenever any person shall be convicted of any one of the offences following as an indictable misdemeanor, that is to say, any cheat or fraud punishable at common law; any conspiracy to cheat or defraud, or to extort money or goods, or falsely to accuse of any crime, or to obstruct, prevent, pervert, or defeat the course of public justice; any escape or rescue from lawful custody on a criminal charge; any public and indecent exposure of the person; any indecent assault, or any assault occasioning actual bodily harm; any attempt to have carnal knowledge of a girl under twelve years of age; any public selling, or exposing for public sale or to public view, of any obscene book, print, picture, or other indecent exhibition; it shall be lawful for the court to sentence the offender to be imprisoned for any term now warranted by law, and also to be kept to hard labour during the whole or any part of such term of imprisonment."

The sole object, therefore, of introducing an averment in an indictment for assault that it occasioned actual bodily harm, has reference to the punishment, as it enables the court to add hard labour to the imprisonment. The defendant may be convicted, although it appear that his offence amounts to a felony, for the statute 14 & 15 Vict. c. 100, s. 12, enacts that "if, upon the trial of any person for any misdemeanor, it shall appear that the facts given in evidence amount in law to a felony, such person shall not by reason thereof be entitled to be acquitted of such misdemeanor; and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for felony on the same facts, unless the court before which such trial may be had shall think fit, in its discretion, to discharge the jury from giving any verdict upon such trial, and to direct such person to be indicted for felony, in which case such person may be dealt with in all respects as if he had not been put upon his trial for such misdemeanor."

"This section," observes Mr. Greaves, "was introduced to put an end to all question as to whether, on an indictment for a misdemeanor in case upon the evidence it appeared that a felony had been committed, the defendant was entitled to be acquitted, on the ground that the misdemeanor merged in the felony: (*Reg. v. Neale*, 1 C. & K. 591; 1 D. C. C. 36; *Reg. v. Button*, 11 Q. B. 929.) The discretionary power to discharge the jury is given in order to prevent indictments being collusively or improperly preferred for misdemeanors where they ought to be preferred for felonies, and also to meet those cases where the felony is liable to so much more severe a punishment than the misdemeanor, that it is fitting that the

prisoner should be tried and punished for the felony. For instance, if on an indictment for attempting to commit a rape, it clearly appeared that the crime of rape was committed, it would be right to discharge the jury:" (Lord Campbell's Acts, by Greaves, p. 16.)]

Precedents.

2. *Misdemeanors*

No. VI.

Assault occasioning actual bodily harm, with a Count for a Common Assault.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully did make an assault
upon one C. D., and did then unlawfully beat, wound and ill-treat the
said C. D., and did thereby then occasion actual bodily harm to the said
C. D., against the form of the statute in such case made and provided.

Second Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B., afterwards, to wit, on the day and year aforesaid, unlawfully did make an assault upon the said C. D., and did then unlawfully beat, wound, and ill-treat the said C. D.

[If there is any doubt whether the assault did occasion actual bodily harm, this form should be adopted, containing a common count on which imprisonment without hard labour may be inflicted. On the other hand, the defendant may be convicted on the first count, although the offence amount to a felony: (see sect. 12 of the 14 & 15 Vict. c. 100, note to form V., ante.)]

No. VII.

Maliciously inflicting grievous bodily harm.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully and maliciously did
inflict upon one C. D., some grievous bodily harm, against the form of
the statute in such case made and provided.

[The statute 14 & 15 Vict. c. 19, s. 4, after reciting that "it is expedient to make further provision for the punishment of aggravated assaults," enacts, "that if any person shall unlawfully and maliciously inflict upon any other person, either with or without any weapon or instrument, any grievous bodily harm, or unlawfully and maliciously cut, stab, or wound any other person, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned, with or without hard labour, for any term not exceeding three years: provided, however, that nothing herein contained shall be deemed or taken to repeal the provisions of the twenty-ninth section of the act passed in the tenth year of the reign of His late Majesty King George the Fourth, chapter thirty-four. "This section," says Mr. Greaves, "is aimed at such injuries to the person, accompanied with grievous bodily harm, as do not amount to felony. It contains two parts. The first applies to those cases where any person unlawfully and maliciously inflicts any grievous bodily harm, either with or without any instrument. In order to bring a person within this clause, two things must concur. The person must unlawfully and maliciously inflict a bodily injury, and the injury must be such as amounts to grievous bodily harm; but it is unnecessary either that the skin should be broken, or that any instrument should be used for the purpose of inflicting the injury. The clause will, therefore, apply as well to all those cases so repugnant to humanity, where a nose, ear, or finger shall be maliciously bitten off, as to those cases where other grievous bodily harm has been inflicted, but no wound caused."

Precedents.

2. *Misdemeanors* This section does not repeal the provisions of the statute 7 Will. 4 & 1 Vict. c. 85, ss. 2, 3, 4, 5, relating to offences against the person; and, on the other hand, a person may be indicted and convicted for an offence under the 14 & 15 Vict. c. 19, s. 4, although the crime should be of the higher nature, and within the 7 Will. 4 & 1 Vict. c. 85: (see 14 & 15 Vict. c. 100, s. 12, *post*, note to form No. IX.) The cases, however, to which the above provision of the recent statute should be confined, are those where the previous statute has been decided to be inapplicable, namely, where there is no instrument used, but the injury is inflicted by the hand, fist, or teeth, or where there is no cutting or wounding, for it would be contrary to the policy of the law if an offence amounting to a felony should be treated as a misdemeanor. The act mentioned in the proviso of the above section relates to Ireland alone.

The above form of indictment (as well as the form, *post*), is given by Mr. Greaves, who directs a second count to be added for an assault occasioning actual bodily harm: (see the next form.)

On this count the defendant may be convicted of an attempt to commit the statutable misdemeanor: (14 & 15 Vict. c. 100, s. 9.)]

No. VIII.

Maliciously inflicting grievous bodily harm, with a Count for an Assault, occasioning actual bodily harm.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully and maliciously did
inflict upon one C. D. some grievous bodily harm, against the form of
statute in such case made and provided.

Second Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B., afterwards, on the day and year aforesaid, unlawfully did make an assault upon the said C. D., and did then unlawfully beat, wound and ill-treat the said C. D., and did thereby then occasion actual bodily harm to the said C. D., against the form of the statute in such case made and provided.

[This second count should be in general added, as directed by Mr. Greaves (see the note to the last form), to meet the event of the failure of proof on the first count. As the multiplication of counts unnecessarily, should be avoided, a count for a common assault ought not to be added. If there is any doubt as to whether a count for an assault, occasioning actual bodily harm, can be supported, it is clear the count for maliciously inflicting grievous bodily harm ought not to be used, but the form No. VI. should be adopted, a count for an "Assault occasioning actual bodily harm, and a Count for a Common Assault."]

No. IX.

Maliciously cutting.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully and maliciously did
wound one C. D., against the form of the statute in such case made and
provided.

[See the 4th section of the statute 14 & 15 Vict. c. 19, set out in the note to form No. VII. *ante*, p. xxiii. This form applies, says Mr. Greaves, "to those cases where any person unlawfully

and maliciously cuts, stabs, or wounds any other person. In order to bring a person within this clause, it must be shown that the cut, stab, or wound was unlawfully and maliciously inflicted." The words "with or without any weapon, or instrument," do not seem to apply to this part of the section; and as, therefore, the cutting, stabbing, or wounding must be defined as heretofore, it is but rarely that there can be an unlawful and malicious stabbing, cutting or wounding which does not amount to a felony under prior enactments, and consequently the above form can only be properly adopted in rare and exceptional cases. When used, a count should be added for an assault occasioning actual bodily harm. A defendant may be convicted on the above form, although the offence amounts to felony: (14 & 15 Vict. c. 100, s. 12.)]

Precedents.

2. *Misdemeanors*

No. X.

Assault with intent to Steal from the Person, with a Count for a Common Assault.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully did make an assault
upon one C. D., with intent then feloniously to steal, take and carry away
the money, goods and chattels of the said C. D., from his person, against
the form of the statute in such case made and provided.

Second Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said C. D., afterwards, to wit, on the day and year aforesaid, unlawfully did make an assault upon the said C. D.

[The statute 9 Geo. 4, c. 31, s. 25, enacts, that where any person shall be charged with and convicted of as a misdemeanor (amongst other offences) any assault with intent to commit felony, the court may sentence the offender to be imprisoned, with or without hard labour, for any term not exceeding two years. Every attempt to commit a felony against the person of an individual without his consent, involves an assault. If the evidence does not prove the intent, but proves the assault, the defendant may be convicted on the second count of the common assault.]

This form is applicable to the case of a pickpocket caught in the attempt. It is to be observed that an assault, with intent to rob, is made a *felony* by the statute 7 Will. 4 & 1 Vict. c. 87, s. 6; but if upon an indictment for the misdemeanor in the above form, it should appear that the offence amounted to the felony of assaulting with intent to rob, the defendant is not entitled to an acquittal. See the statute 14 & 15 Vict. c. 100, s. 12, note to form No. VI. *ante*. So, on the other hand, on an indictment for the felony of actually stealing from the person, the defendant may be convicted of the *attempt* to steal, if the evidence fail to show the complete offence: (statute 14 & 15 Vict. c. 100, s. 9.)]

No. XI.

Assault on a Parish Constable in the execution of his duty, with a Count for a Common Assault.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, did make an assault upon one
C. D., the said C. D. then being a peace officer, to wit, a constable, and
then being in the due execution of his duty, as such constable, and did
then beat, wound and ill-treat the said C. D., so being in the due execu-

Precedents. tion of his duty as aforesaid, against the form of the statute in such case made and provided.

2. Misdemeanors *Second Count.*—And the jurors aforesaid, upon their oath aforesaid, do further present that the said A. B., on the day and year aforesaid, unlawfully did *assault, beat, wound and ill-treat* the said C. D.

[See the statutes 9 Geo. 4, c. 31, s. 25, and 5 & 6 Vict. c. 109. If the evidence fails to prove that the constable was at the time acting in the execution of his duty, the defendant may be convicted of a common assault under the second count. If the evidence warrants it, a count may be inserted for an assault, occasioning actual bodily harm, or for maliciously inflicting grievous bodily harm, or for maliciously cutting. See forms No. VI, VII, and IX.]

No. XII.

Assault on a Police Constable in the execution of his duty.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, did make an assault upon one
C. D., the said C. D. then being a peace officer, to wit, a police constable,
and then being in the due execution of his duty as such police constable,
and did then beat, wound and ill-treat the said C. D., so being in the due
execution of his duty as aforesaid, against the form of the statute in such
case made and provided.

[See the statute 9 Geo. 4, c. 31, s. 35, and 2 & 3 Vict. c. 93, s. 8. Add a count for a common assault as in the last precedent, and see note to that form.]

No. XIII.

Assault upon a Revenue Officer in the execution of his duty.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B. on the day
of , in year of Lord 1853, did make an assault upon one C. D., the
said C. D. then being a revenue officer, to wit, an excise officer, and then
being in the execution of his duty as such revenue officer, and did then
beat, wound and ill-treat the said C. D. so being in the due execution
of his duty as aforesaid, against the form of the statute in such case made
and provided.

[See the statute 9 Geo. 4, c. 31, s. 25. Add a count for a common assault, as in No. XI, and see the note to that form.]

*Precedents.**2. Misdemeanors*

No. XIV.

Assault on a Special Constable in the execution of his duty.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, did make an assault upon one
C. D., the said C. D. then being a peace officer, to wit, a special constable,
and then being in the due execution of his office as such special constable,
and did then beat, wound and ill-treat the said C. D., so being in the due
execution of his office as aforesaid, against the form of the statute in such
case made and provided.

[See the statute 1 & 2 Will. 4, c. 41, s. 10. Add a count for a common assault as in
No. XI., and see the note to that form.]

No. XV.

Assault on a Local Constable.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B. on the day
of , in the year of our Lord 1853, did make an assault upon one
C. D., the said C. D. then being a peace officer, to wit, a local constable,
and then being in the due execution of his office as such local constable,
and did then beat, wound, and ill-treat the said C. D., so being in the
due execution of his office as aforesaid, against the form of the statute in
such case made and provided.

[See the statute 3 & 4 Vict. c. 88, s. 16. Add a count for a common assault, as in
No. XI., and see the note to that form.]

No. XVI.

Assault upon a Person acting in aid of a Constable.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B. on the day
of , in the year of our Lord 1853, did make an assault upon one
C. D., the said C. D. then acting in aid of one E. F., a peace officer, to
wit, a constable, then being in the due execution of his duty as such
constable, and did then beat, wound and ill-treat the said C. D. so acting
in aid of the said E. F. as such peace officer as aforesaid, against the
form of the statute in such case made and provided.

[See the statute 9 Geo. 4, c. 31, s. 25. Add a count for a common assault as in No. XI.
and see the note to that form.]

*Precedents.**2. Misdemeanors*

No. XVII.

Assault with intent to resist the lawful apprehension of the party assaulting.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., on the day
 of , in the year of our Lord 1853, did make an assault upon one
 C. D., and did then beat, wound and ill-treat him, with intent in so
 doing then and thereby to resist and prevent the lawful apprehension of
 him the said A. B., for a certain offence of which he the said A. B. was
 then liable to be apprehended by the said C. D., that is to say, for then
 feloniously stealing money, the property of the said C. D., from the
 person of the said C. D., against the form of the statute in such case
 made and provided.

[See the statute 9 Geo. 4, c. 31, s. 25. Add a count for a common assault, as in No. XI,
 and see the note to that form.]

No. XVIII.

Assault with intent to prevent the lawful apprehension of a third party.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., on the day
 of , in the year of our Lord 1853, did make an assault upon one
 C. D., and did then beat, wound and ill-treat him, with intent in so doing
 then and thereby to resist and prevent the lawful apprehension of one
 E. F., for a certain offence for which the said E. F. was then liable to be
 apprehended by the said C. D., that is to say, for unlawfully and mali-
 ciously cutting and wounding one G. H., against the form of the statute
 in such case made and provided.

[See the statute 9 Geo. 4, c. 31, s. 25. Add a count for a common assault as in No. XI,
 and see the note to that form.]

No. XIX.

Assault with intent to prevent the lawful apprehension of the defendant and another.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., on the day
 of , in the year of our Lord 1853, did make an assault upon one
 C. D., and did then beat, wound and ill-treat him, with intent in so doing
 then and thereby to resist and prevent the lawful apprehension of him the
 said A. B., and of one E. F., for a certain offence for which they the said

A. B. and E. F. respectively were then liable to be apprehended by the said C. D., that is to say, for feloniously breaking and entering the dwelling-house of the said C. D., with intent to steal therein. *Precedents.*
2. Misdemeanors

[See the statute 9 Geo. 4, c. 31, s. 25. Add a count for a common assault, as in No. XI, and see the note to that form.]

No. XX.

Assault by several with intent to prevent the lawful apprehension of one of the defendants.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., C. D., and E. F.,
on the day of , in the year of our Lord 1853, did make
an assault upon one G. H., and did then beat, wound and ill-treat him,
with intent in so doing then and thereby to resist and prevent the lawful
apprehension of the said A. B., for a certain offence for which he the said
A. B. was then liable to be apprehended by the said G. H., that is to say,
for assaulting the said G. H., then being a peace officer in the execution
of his duty; against the form of the statute in such case made and
provided.

[See the statute 9 Geo. 4, c. 31, s. 25. Add a count for a common assault, as in No. XI, and see the note to that form.]

No. XXI.

Assault with intent to resist the lawful detainer of the party assaulting.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, did make an assault upon one
C. D., and did then beat, wound and ill-treat him, with intent in so
doing then and thereby to resist and prevent the lawful detainer of him
the said A. B., for a certain offence for which the said A. B. was then
liable to be detained by the said C. D., that is to say, for being found
by the said C. D. stealing turnips of one E. F., growing in the land of
the said E. F., against the form of the statute in such case made and
provided.

[See the statute 7 & 8 Geo. 4, c. 29, s. 63; 9 Geo. 4, c. 31, s. 25; and see *Rea v. Curran*, 3 C. & P. 397. Add a count for a common assault as in No. XI, and see the note to that form.]

*Precedents.**2. Misdemeanors*

No. XXII.

Assault with intent to prevent the lawful detainer of a third party.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., on the day
 of in the year of our Lord 1853, did make an assault upon one
 C. D., and did then beat, wound, and ill-treat him, with intent in so
 doing then and thereby to resist and prevent the lawful detainer of one
 E. F., for a certain offence for which the said E. F. was then liable to
 be apprehended by the said C. D., that is to say, for unlawfully and
 maliciously cutting and wounding the said C. D., against the form of the
 statute in such case made and provided.

[See the statute 9 Geo. 4, c. 31, s. 25. Add a count for a common assault as in No. XI,
 and see the note to that form.]

No. XXIII.

Assault with intent to prevent the lawful detainer of the Defendant and another.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., on the day
 of , in the year of our Lord 1853, did make an assault upon one
 C. D., and did then beat, wound, and ill-treat him, with intent in so
 doing then and thereby to resist and prevent the lawful detainer of him
 the said A. B., and of one E. F., for a certain offence for which they the
 said A. B. and E. F. respectively were then liable to be detained by the
 said C. D., that is to say, for feloniously assaulting with intent to rob
 the said C. D., against the form of the statute in such case made and
 provided.

[See the statute 9 Geo. 4, c. 31, s. 25. Add a count for a common assault as in No. XI,
 and see the note to that form.]

No. XXIV.

Assault by several with intent to prevent the lawful detainer of one of the defendants.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., C. D., and E. F.
 on the day of in the year of our Lord 1853, did make an
 assault upon one G. H., and did then beat, wound and ill-treat him,
 with intent in so doing then and thereby to resist and prevent the
 lawful detainer of the said A. B. for a certain offence for which he

the said A. B. was then liable to be detained by the said G. H., that is to say, for feloniously stealing the goods and chattels of the said G. H., against the form of the statute in such case made and provided. *Precedents.*
2. *Misdemeanors*

[See the statute 9 Geo. 4, c. 31, s. 25. Add a count for a common assault, as in No. XI., and see the note to that form.]

No. XXV.

General form of Indictment for Riot and Assault, with counts for inflicting grievous bodily harm, cutting and stabbing, unlawfully wounding, assaulting Peace Officer in the execution of duty, assault to prevent the lawful apprehension, detainer, &c.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., C. D., E. F.,
G. H., and J. K., together with divers evil-disposed persons to the jurors
aforesaid unknown, on the day of , in the year of our Lord
1853, unlawfully, riotously, routously and tumultuously did assemble
together, armed with sticks and stones, and other offensive weapons, to
disturb the peace of our Lady the Queen; and did then unlawfully,
riotously, routously and tumultuously make a great noise, riot and
tumult, to the great terror and disturbance of all persons then passing
and residing there; and being so assembled and gathered together as
aforesaid, they the said A. B., C. D., E. F., G. H., and J. K., and the
said other evil-disposed persons aforesaid, did then unlawfully, riotously,
routously and tumultuously make an assault upon L. M., and did then
unlawfully, riotously, routously and tumultuously beat, wound and ill-
treat him.

Second Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said A. B., C. D., E. F., G. H., and J. K., on the day and year aforesaid, unlawfully and maliciously did inflict upon the said L. M. some grievous bodily harm, against the form of the statute in such case made and provided.

Third Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said A. B., C. D., E. F., G. H., and J. K., on the day and year aforesaid, unlawfully and maliciously did cut, stab and wound the said L. M., against the form of the statute in such case made and provided.

Fourth Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said A. B., C. D., E. F., G. H., and J. K., on the day and year aforesaid, unlawfully did make an assault in and upon the said L. M., and did then unlawfully beat, wound and ill-treat the said L. M., and did thereby then occasion actual bodily harm to the said L. M., against the form of the statute in such case made and provided.

Fifth Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said A. B., C. D., E. F., G. H., and J. K., on the day and year aforesaid, did make an assault upon the said L. M., the said L. M. then being a peace officer, to wit, a constable, and then being in the due execution of his duty as such constable, and did then beat, wound and ill-treat the said L. M., so being in the due execution of his

Precedents. duty as aforesaid, against the form of the statute in such case made and provided.
2. Misdemeanors

Sixth Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said A. B., C. D., E. F., G. H., and J. K., on the day and year aforesaid, did make an assault upon the said L. M., and did then beat, wound and ill-treat him, with intent in so doing then and thereby to resist and prevent the lawful apprehension of the said A. B. for a certain offence for which the said A. B. was then liable to be apprehended by the said L. M.; that is to say, for assaulting the said L. M., then being a peace officer in the execution of his duty, against the form of the statute in such case made and provided.

Seventh Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said A. B., C. D., E. F., G. H., and J. K., on the day and year aforesaid, did make an assault upon the said L. M., and did then beat, wound and ill-treat him, with intent in so doing then and thereby to resist and prevent the lawful detainer of the said A. B. for a certain offence, for which he, the said A. B., was then liable to be detained by the said L. M.; that is to say, for assaulting the said L. M., then being a peace officer in the execution of his duty, against the form of the statute in such case made and provided.

Eighth Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said A. B., C. D., E. F., G. H., and J. K., on the day and year aforesaid, unlawfully did make an assault in and upon one L. M., and did then unlawfully beat, wound and ill-treat the said L. M.

[The above general form of indictment for riot and assault is not given as a precedent to be literally adopted with all the counts in ordinary cases, but rather with a view to the selection of such of the counts as seem really applicable to the evidence. The multiplication of unnecessary counts is a serious evil, not to be encouraged; but at the same time the real facts of those cases which involve charges of riot and assault on peace officers, are frequently obscured by conflicting testimony and the excited state of the parties concerned, and cannot be elicited until the witnesses are subjected to examination and cross-examination on the trial. It is therefore frequently necessary in these cases to vary the charge to prevent the offenders escaping from punishment altogether. Such of the above counts, therefore, as seem generally applicable should be adopted. For instance, it may be sometimes prudent to use the 1st, 2nd, 6th, 7th and 8th counts, or the 1st, 4th, 5th and 8th counts; but in no case can it be necessary to use the 2nd, 3rd and 4th counts together, for the nature and result of the assault, so far as to determine whether it be a stab, or merely an unlawful wounding, or anything beyond a common assault, can be readily ascertained. On the other hand, instead of the 5th, 6th, or 7th counts, it may be necessary to introduce one or more of those in forms between Nos. XII. and XXIV.]

No. XXVI.

Assault on a Person apprehending Defendant for an offence under the 14 & 15 Vict. c. 19, with a Count for a Common Assault.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, was by night, to wit, about the
hour of eleven in the night of the same day, at the parish of in
the county of Stafford, then and there armed with a certain offensive

weapon, to wit, a pistol, with intent then and there by night as aforesaid to break into the dwelling-house of one C. D., there situate, and then and there by night as aforesaid in the said dwelling-house feloniously to steal, take and carry away the goods and chattels of the said C. D. then and there being in the said dwelling-house, against the form of the statute in such case made and provided. And that the said A. B. was then and there by night as aforesaid, found committing the said misdemeanor by one E. F., and that the said E. F. did then and there attempt to apprehend the said A. B. for the said misdemeanor, and that the said A. B. did then and there unlawfully assault and offer violence to the said E. F., so then and there attempting to apprehend the said A. B. for the said misdemeanor as aforesaid, against the form of the statute in such case made and provided.

Presidents.

2. Misdemeanors

Second Count.—And the jurors aforesaid upon their oath aforesaid, do further present that the said A. B., on the day and year aforesaid, unlawfully did assault, beat, wound and ill-treat the said E. F.

[The statute 14 & 15 Vict. c. 19, s. 10, enacts that "it shall be lawful for any person whatsoever to apprehend any person who shall be found committing any offence against the provisions of this act, and to convey him or deliver him to some constable or other peace-officer, in order to his being conveyed, as soon as conveniently may be, before a justice of the peace, to be dealt with according to law." And sect. 12 enacts that, "if any person liable to be apprehended under the provisions of this act shall assault or offer any violence to any person by law authorized to apprehend or detain him, or to any person acting in his aid and assistance, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable to be imprisoned, with or without hard labour, for any term not exceeding three years."

Mr. Greaves observes, with reference to the last-mentioned section, that it "was introduced to protect all persons endeavouring to apprehend offenders under the provisions of the act. In order to bring a person within this clause, it must be shown that he was found committing some offence for which he was liable to be apprehended under the provisions of this act, and that he assaulted some person attempting to apprehend or detain him, or some person acting in his aid and assistance."

The proof here stated to be necessary, is certainly true with reference to the indictment in the preceding form, which is framed for the case of an assault on a person who actually *found* the offender committing the offence, and who derives his power to apprehend from the 10th section above set out; and moreover, the offence itself consists in being *found* by night armed. But it is to be observed that the 12th section is more extensive, and evidently includes assaults on all persons authorized by law to apprehend or detain the offender, and, consequently, extends to assaults on peace-officers apprehending or detaining by virtue of a warrant, rendering proof that the party was *found* committing the offence, in many cases unnecessary. The offences comprised in the statute 14 & 15 Vict. c. 19, are:

1. Being found anywhere by night armed with any dangerous or offensive weapon or instrument whatever, with intent to break or enter into any dwelling-house or other building whatsoever, and to commit any felony therein.
2. Being found anywhere by night in possession without lawful excuse (the proof of which excuse is imposed upon such person) of any picklock, key, crow, jack, or other implement of housebreaking.
3. Being found anywhere by night with a face blackened or otherwise disguised, with intent to commit any felony.
4. Being found by night in any dwelling-house or other building, with intent to commit any felony therein.
5. Unlawfully applying or administering, or attempting to apply or administer to any other person, any chloroform, laudanum, or other stupefying or overpowering drug, matter, or thing, with intent to enable such offender or any other person to commit, or with intent to assist such offender or other person in committing, any felony.
6. Unlawfully and maliciously inflicting upon any other person, either with or without any weapon or instrument, any grievous bodily harm, or unlawfully and maliciously cutting, stabbing, or wounding any other person.
7. Wilfully and maliciously putting, placing, casting or throwing upon or across any railway any wood, stone, or other matter, or thing, with intent to obstruct, upset, overthrow or destroy any engine, tender, carriage, or truck using such railway, or to endanger the safety of any person travelling or being upon such railway.

*Precedents.*2. *Misdemeanors*

8. Wilfully and maliciously taking up, removing or displacing any rail, sleeper, or other matter or thing belonging to any railway, with any of the intents before mentioned.
9. Wilfully and maliciously turning, moving, or diverting any points or other machinery belonging to any railway, with any of the intents before mentioned.
10. Wilfully and maliciously making or showing, bidding or removing any signal or light upon or near to any railway, with any of the intents before mentioned.
11. Wilfully and maliciously doing or causing to be done, any other matter or thing, with any of the intents before mentioned.
12. Wilfully and maliciously casting, throwing, or causing to fall or strike against, into, or upon any engine, tender, carriage or truck, used upon any railway, any wood, stone, or other matter or thing, with intent to endanger the safety of any person being in or upon such engine, tender, carriage, or truck.
13. Wilfully and maliciously setting fire to any station, engine-house, warehouse, or other building belonging or appertaining to any railway, dock, canal, or other navigation.
14. Wilfully and maliciously setting fire to any goods or chattels being in any building, the setting fire to which is made felony by this or any other act of Parliament.

It is to be observed that, of the above offences, the first four and the last are triable at quarter sessions: and, as a charge of assault against a person liable to be apprehended for an offence is generally accompanied by a prosecution for that offence, and, consequently, the same tribunal that disposes of the one disposes of the other arising out of it, it follows that charges of assault under the 12th section tried at quarter sessions, will, in practice, be confined to those cases where the offence that gave rise to it is comprised in the first four or the last class. For example, a Court of Quarter Sessions will be rarely, if ever, called on to try an offender for assaulting a person apprehending him for malicious acts on railways under the statute; because, that court having no power to try the offender for that charge, he must be tried for it at the assizes, and there also the charge of assault, if made at all, will be preferred. On the other hand, if the assault was committed in the apprehension of the offender for being found at night armed, with intent to commit felony, as the latter offence is triable at quarter sessions, whenever the offender is committed for trial at the sessions, the charge of assault will be also disposed of there.

The provisions of the 12th section do not appear to be productive of any great practical advantage, for, by the 9 Geo. 4, c. 31, s. 25, any person convicted of 'any assault upon any person with intent to resist or prevent the lawful apprehension or detainer of the party so assaulting, or of any other person, for any offence for which he or they may be liable by law to be apprehended,' may be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding two years, and may be also fined, and required to find sureties for keeping the peace. The 12th section of the recent statute is only more extensive in the following respects:—First, that, under it, it is not necessary that the assault should be with intent to resist or prevent the lawful apprehension or detainer; and, secondly, in the amount of punishment, three years being the limit instead of two. The latter is, however, of little consequence, as even the two years' imprisonment under the statute of 9 Geo. 4 is seldom inflicted, for the simple reason that, if the assault produce serious results to the health or limb of the party, the offender must be, of necessity, amenable to heavier punishment under other provisions of the law, and upon an indictment differently framed. The other distinction is of little value, for it is very rarely, if ever, that an assault is committed by a person about to be apprehended or in actual custody, unless with a view to prevent his apprehension or detainer. The 9 Geo. 4, c. 31, is, on the other hand, more comprehensive in a material point than the above 12th section; for, as Mr. Greaves observes, under the 25th section of the old act, any person, *other than the party liable to be apprehended*, may be punished for any assault on a person apprehending or detaining any person under the recent statute. The forms above given for cases under the 25th section of the 9 Geo. 4, c. 31, seem to be, therefore, sufficient in almost all cases (see forms from No. XVII. to No. XXIV.); and they have the advantage of being more concise than the last and the next forms, which seem unnecessarily long, but are drawn in conformity with those given by Mr. Greaves, in his edition of Lord Campbell's Acts, p. 78.]

No. XXVII.

Assault on a Person aiding another in apprehending Defendant for an offence under the 14 & 15 Vict. c. 19.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., on the day
 of , in the year of our Lord 1853, at the parish of in

the county of Stafford, feloniously, wilfully and maliciously did set fire to a certain *stack of wood*, then and there being in a certain dwelling-house of one C. D. there situate, against the form of the statute in such case made and provided; and that the said A. B. was then and there found committing the said felony by one E. F., and that the said E. F. did then and there attempt to apprehend the said A. B. for the said felony, and that one G. H. did then and there aid and assist the said E. F. to apprehend the said A. B. for the felony aforesaid; and that the said A. B. did then and there assault the said G. H. so then and there acting in aid and assistance of the said E. F. in apprehending the said A. B. for the said felony as aforesaid, against the form of the statute in such case made and provided.

Precedents.

2. *Misdemeanors*

[Add a count for a common assault as in the last form, and see the note to that form.]

No. XXVIII.

Assault on a Person apprehending Defendant committing an indictable offence in the night.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, did by night, to wit, about the
hour of twelve in the night of the same day, feloniously steal, take and
carry away *six tame hen fowls* of the goods and chattels of C. D.; and
that the said A. B. was then found committing the said felony in the
night as aforesaid, by one E. F., and that the said E. F. did then
attempt to apprehend the said A. B. for the said felony; and that the
said A. B. did then unlawfully assault and offer violence to the said E. F.,
so then attempting to apprehend the said A. B. for the said felony as
aforesaid, against the form of the statute in such case made and pro-
vided.

Second Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said A. B., on the day and year aforesaid, unlawfully did assault, beat, wound and ill-treat the said E. F.

[The statute 14 & 15 Vict. c. 19, s. 11, after reciting that “doubts have been entertained as to the authority to apprehend persons found committing indictable offences in the night,” enacts, “that it shall be lawful for any person whatsoever to apprehend any person who shall be found committing any indictable offence in the night, and to convey him or deliver him to some constable or other peace-officer, in order to his being conveyed, as soon as conveniently may be, before a justice of the peace, to be dealt with according to law.” Mr. Greaves says:—“As the law existed before this statute passed, there were sundry cases in which persons committing offences by night, could only lawfully be apprehended by certain specified individuals, amongst whom peace-officers and constables were sometimes omitted. The consequence was, as might naturally be expected, that resistance was frequently made by offenders, and grievous, if not mortal injuries, inflicted upon persons endeavouring to apprehend such offenders. Indeed, many melancholy instances have occurred where death has been occasioned in a nightly fray, and the party causing such death, though found committing an offence for which he might have been lawfully apprehended by some one, has escaped the punishment he deserved for killing a person, who honestly believed that he had not only a right, but was in duty bound, to apprehend him, because it turned out, upon investigation on the trial, that such person was not lawfully entitled so to apprehend, through some cause or other, of which the party killing had no knowledge at the time. This clause, with a view to remedying all such cases, authorizes any person, be he who he may, to apprehend any person found committing any felony or indictable misdemeanor in

- Precedents.* the night; and it is conceived that it will prove highly beneficial, as nothing can more strongly tend to the repression of offences than the certain knowledge that, if the party is found committing them, by any one, such person may at once apprehend him :” (Lord Campbell’s Acts by Greaves, p. 46.) The above form and the following, are framed on this section, coupled with the 12th section, set out in the note to form No. XXVI. See the observations in that note, as to the sufficiency of the ordinary forms under the 9 Geo. 4, c. 31, s. 25.]
2. *Misdemeanors*

No. XXIX.

Assault on a Person aiding another in apprehension of Defendant committing an indictable offence in the night.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, did by night, to wit, about the
hour of ten in the night of the same day, feloniously steal, take and
carry away *one wether sheep*, the property of C. D., against the form of
the statute in such case made and provided; and that the said A. B. was
then found committing the said felony in the night as aforesaid by one
E. F., and that the said E. F. did then attempt to apprehend the said
A. B. for the said felony, and that one G. H. did then by night aid and
assist the said E. F. to apprehend the said A. B. for the felony aforesaid;
and that the said A. B. did then assault the said G. H., so then acting in
aid and assistance of the said E. F. in apprehending the said A. B., by
night, for the said felony as aforesaid, against the form of the statute in
such case made and provided.

[Add a count for a common assault as in the last form, and see the note to that form.]

No. XXX.

Against a Master or Mistress for neglecting to provide food for an Apprentice or Servant under the 14 & 15 Vict. c. 11.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, was the master of one C. D., his
apprentice, and was then legally liable to provide for the said C. D., as
his apprentice as aforesaid, necessary food and clothing, and that the said
A. B. did then wilfully, and without lawful excuse, refuse and neglect to
provide necessary food and clothing for the said C. D., whereby the
health of the said C. D. then was permanently injured, against the form
of the statute in such case made and provided.

[The statute 14 & 15 Vict. c. 11, s. 1, enacts, “that where the master or mistress of any person shall be legally liable to provide for such person as an apprentice or as a servant, necessary food, clothing or lodging, and shall wilfully, and without lawful excuse, refuse or neglect to provide the same, or where the master or mistress of any such person shall unlawfully and maliciously assault such person, whereby the life of such person shall be endangered, or the health of such person shall have been or shall be likely to be permanently injured, such master or mistress shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to be

imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding three years." "This section," observes Mr. Greaves, "is obscurely worded. It seems doubtful whether the words, 'whereby the life of such person,' &c., are applicable to the clause as to the assaulting only, or to both clauses. It will be safer, therefore, in any indictment on the first clause, to have one count alleging that the life or health was endangered, &c. and another omitting that allegation" (Lord Campbell's Acts, by Greaves, p. 79); but, it is observed by Mr. Archbold that, if the above words really do not form any part of the definition of the offence, they may be rejected as surplusage, and need not be proved: (Archbold's new System of Criminal Procedure, &c. p. 292.)

Precedents.

2. Misdemeanors

As all persons who take part in the commission of a misdemeanor are principals, it should seem that a wife, who co-operated with her husband in committing any offence within this section, would be liable to be prosecuted and punished in the same manner as her husband, provided her co-operation were such as to show that she did not act under the coercion of her husband: (see 1 Russell on Crimes and Misdemeanors, p. 18, *et seq.*; *Reg. v. Moland*, 2 M. C. C. R. 276; *Reg. v. Clayton*, 1 C. & Kir. 128; *Ree v. Douglas*, R. & M. C. C. R. 480; *Reg. v. Wright*, 9 C. & P. 754.) And, on the same ground, any servant or other who co-operated with a master or mistress in committing any such offence, would also seem to be equally liable to punishment: (Lord Campbell's Acts, by Greaves, pp. 49, 50.)

Section 2 of the statute enacts that "the costs and expenses of the prosecution of any such misdemeanor as aforesaid, may be allowed and ordered by the court before which the indictment shall be tried, in like manner as the costs of the prosecution in certain cases of misdemeanor under the act of the seventh year of the reign of King George the Fourth, chapter sixty-four, or may be allowed and ordered by the Court of Queen's Bench, in case the indictment shall have been removed into that court, to be paid by the treasurer of the county, or other officer who would have been liable to pay under the order of the court, in which, but for such removal, the indictment would have been tried."]

No. XXXI.

Against a Master or Mistress for maliciously assaulting an Apprentice or Servant under the 14 & 15 Vict. c. 11, with Counts for maliciously inflicting bodily harm, and for a Common Assault.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully and maliciously did make
an assault in and upon one C. D., his apprentice, and did then beat and
ill-treat the said C. D., whereby the health of the said C. D. was then
permanently injured, against the form of the statute in such case made
and provided.

Second Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said A. B., on the day and year aforesaid, unlawfully did assault the said C. D., and then unlawfully and maliciously did inflict upon him some grievous bodily harm, against the form of the statute in such case made and provided.

Third Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said A. B., on the day and year aforesaid, unlawfully did assault, beat, wound and ill-treat the said C. D.

[See the statute 14 & 15 Vict. c. 11, s. 1, in the note to the last form.]

Second Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said A. B., on the day and year aforesaid, did make an assault on the said C. D., and did beat, wound and ill-treat the said C. D.

There does not appear to be any legal necessity for a separate count in order to convict the defendant of a common assault, for the judgment of the court (imprisonment without hard labour) would not be inconsistent with the offence charged in the indictment, although hard labour might have been added if the defendant were convicted of the whole offence. Still it seems fairer to the prisoner, as there may be a great distinction in the enormity of the offence between an indecent and a common assault, that if guilty only of the latter, the record of his offence should be clearly confined to that.]

No. XXXIII.

Indecent Assault with intent to have an improper connexion.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, did unlawfully and indecently assault one C. D., and did then unlawfully and indecently, and against the will of the said C. D., put and place the private parts of the said A. B. against the private parts of the said C. D., and did otherwise ill-treat and ill-use her.

[See *Reg. v. Stanton*, 1 C. & K. 415, and the distinction pointed out in that case by Mr. Justice Coleridge, between an assault with intent to commit a rape, and an assault with intent to have an improper connexion: and see *Reg. v. Saunders*, 8 C. & P. 265; *Reg. v. Williams*, *Id.*, 286. The act being done fraudulently will support the averment that it was against the will of the prosecutrix. This form seems applicable where actual connexion has taken place under circumstances involving any legal assault, but no higher offence: (see *Reg. v. Case*, 1 Den. C. C. 580; 19 L. J., N.S., 174, M. C.; S. C., 4 Cox Crim. Cas 220.)

No. XXXIV.

Indecent Assault by other means.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853 did unlawfully and indecently assault one C. D., and did then unlawfully and indecently, and against the will of the said C. D., pull and strip the clothes of the said C. D. from and off the body of the said C. D., and did otherwise ill-treat and ill-use her.

[This indictment is framed with reference to the case of *Rex v. Rosinski* (R. & M. C. C. R. 19), where it was held that a medical man making a female patient strip naked under the pretence that he could not otherwise judge of her illness, is an assault, if he himself assisted to take off the clothes.]

No. XXXV.

Assault with intent to commit a Rape.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, did unlawfully make an assault upon one C. D., with intent then to ravish and carnally know the said C. D. against her will, against the form of the statute in such case made and provided.

[See the statute Geo. 4^o c. 31, s. 25. The defendant may be, it seems, convicted of this offence, although it should appear that a rape was actually perpetrated: (see the stat. 14 & 15 Vict. c. 100, s. 12, note to form No. XXXVII.), but in such a case it would be right to dis-

Precedents. charge the jury, so that the prisoner might be indicted for the felony: (see Lord Campbell's Acts, by Greaves, p. 16.) A question may be raised indeed, notwithstanding s. 12 of the 14 & 15 Vict. c. 100, whether, if the offence did in fact amount to rape, a Court of Quarter Sessions has jurisdiction to try an indictment for the inferior offence?]

2. *Misdemeanors*

No. XXXVI

Assault with intent to commit a Rape, with a Count for an Indecent Assault.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, did unlawfully make an assault
upon one C. D., with intent then to ravish and carnally know the said
C. D. against her will, against the form of the statute in such case made
and provided.

Second Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B., on the day and year aforesaid, did unlawfully and indecently assault one C. D., and did then unlawfully and indecently, and against the will of her the said C. D., pull up the clothes of her the said C. D., and did then unlawfully, indecently, and against the will of the said C. D., put and place the private parts of him the said A. B. against the private parts of her the said C. D., and then did other wrongs to the said C. D., against the form of the statute in such case made and provided.

No. XXXVII

Carnally knowing a Child above ten and under the age of twelve years.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, did unlawfully and carnally
know and abuse one C. D., the said C. D. then being an infant above
the age of ten years and under the age of twelve years, to wit, of the age
of eleven years, against the form of the statute in such case made and
provided.

[See the statute 9 Geo. 4, c. 31, s. 17. On this indictment the offender may be convicted of an attempt to commit the offence: (see 14 & 15 Vict. c. 100, s. 9.) On the other hand, if the offence turns out to be rape, having been committed against the girl's will, the defendant may still be convicted of the misdemeanor; the 12th section of the last-mentioned statute enacting that "if upon the trial of any person for any misdemeanor, it shall appear that the facts given in evidence amount in law to a felony, such person shall not by reason thereof, be entitled to be acquitted of such misdemeanor; and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for felony on the same facts, unless the court before which such trial may be had, shall think fit in its discretion to discharge the jury from giving any verdict upon such trial, and to direct such person to be indicted for felony, in which case such person may be dealt with in all respects as if he had not been put upon his trial for such misdemeanor," and in the case of rape, the court would generally act on this latter power, and direct the prisoner to be indicted for the felony: (see note to form No. XXXV., "Assault with intent to commit a Rape.")]

No. XXXVIII.

Carnally knowing a Child above ten and under the age of twelve, with a Count for an Indecent Assault.

STAFFORDSHIRE, } THE jurors for our Lady the Queen, upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, did unlawfully and carnally
know and abuse one C. D., the said C. D. then being an infant above the
age of ten years, and under the age of twelve years, to wit, of the age of
eleven years, against the form of the statute in such case made and
provided.

Second Count.—And the jurors aforesaid, upon their oath aforesaid,
do further present that the said A. B., on the day and year aforesaid,
did unlawfully and indecently assault one C. D., and did then unlawfully
and indecently, and against the will of the said C. D., pull up the clothes
of her the said C. D., and did then unlawfully and indecently, and
against the will of the said C. D., put and place the private parts of him
the said A. B. against the private parts of her the said C. D., and then
did other wrongs to the said C. D., against the form of the statute in
such case made and provided.

No. XXXIX.

Attempting to have carnal knowledge of a Girl under twelve years of age.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, did unlawfully make an attempt
to have carnal knowledge of one C. D., then being an infant under the
age of twelve years, to wit, of the age of nine years, against the form
of the statute in such case made and provided.

[The statute 14 & 15 Vict. c. 100, s. 29 (see note to form, No. V., *ante*), empowers the court to inflict hard labour as part of the punishment for persons convicted of "any attempt to have carnal knowledge of a girl under twelve years of age." This section, as has been before remarked, does not create any new offence. Nevertheless, a count in the above form seems sufficient, for although the carnal knowledge of a child under ten is a felony, while the carnal knowledge of a child between ten and twelve is a misdemeanor, yet the attempt to commit either offence is a misdemeanor, for the punishment of which there is no legal distinction. If the child was between the ages of ten and twelve, it will be, generally speaking, advisable to indict the offender for the statutable misdemeanor, and if acquitted of that, he may be convicted of the attempt: (see note to form No. XXXVII.)]

*Precedents.**2. Misdemeanors*

No. XL.

Attempting to have carnal knowledge of a Girl under twelve, with a Count for an Indecent Assault.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, did unlawfully make an attempt
to have carnal knowledge of one C. D., then being an infant under the
age of twelve years, to wit, of the age of nine years, against the form
of the statute in such case made and provided.

Second Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said A. B., on the day and year aforesaid, did unlawfully and indecently assault one C. D., and did unlawfully and indecently, and against the will of the said C. D., pull up the clothes of her the said C. D., and did then unlawfully and indecently, and against the will of the said C. D., put and place the private parts of him the said A. B. against the private parts of her the said C. D., and then did other wrongs to the said C. D., against the form of the statute in such case made and provided.

§ 2. OFFENCES AGAINST PROPERTY.

No. XLI.

Obtaining Goods by means of false pretences.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully, knowingly and
designedly did falsely pretend to C. D., that he the said A. B. was then
sent by E. F. to the said C. D. for a pair of shoes, by means of
which said false pretence the said A. B. did then unlawfully obtain from
the said C. D. a pair of shoes, of the goods and chattels of the said C. D.,
with intent to defraud. Whereas, in truth and in fact, the said A. B.
was not then sent by the said E. F. to the said C. D. for a pair of shoes,
as he the said A. B. then well knew, against the form of the statute in
such case made and provided.

[The statute 7 & 8 Geo. 4, c. 29, s. 53, enacts, that "if any person shall, by any false pretence, obtain from any other person any chattel, money, or valuable security, with intent to cheat or defraud any person of the same, every such offender shall be guilty of a misdemeanor." The same section also provides "that if, upon the trial of any person indicted for such misdemeanor, it shall be proved that he obtained the property in question in any such manner as to amount in law to larceny, he shall not, by reason thereof, be entitled to be acquitted of such misdemeanor." See also the general provision in the recent statute (14 & 15 Vict. c. 100, s. 12), that a person tried for a misdemeanor is not to be acquitted, if the offence turns out to be felony. The 8th section of the last-named statute enacts that it shall be sufficient in any indictment for (*inter alia*) obtaining or attempting to obtain any property by false pretences, to allege that the defendant did the act with intent to defraud, without alleging the intent of the defendant to be to defraud any particular person; and on the trial it shall not be necessary to prove an intent on the part of the defendant to defraud any particular person, but it shall be

sufficient to prove that the defendant did the act charged with an intent to defraud. This provision operates to save the multiplication of counts, by reason of the frequent uncertainty whether the object or the effect of the false pretence was to defraud the person from whom or for whom the property is alleged to have been obtained.

Precedents.

2. *Misdemeanors*

A very learned writer has introduced into a form of indictment for obtaining goods by false pretences, in a similar case to the above, a prefatory averment that the person whose name was made use of was a customer of and well known to C. D., in order to get rid of the objection that such an innendo, when introduced into the body of the indictment, is too large: (Lord Campbell's Acts, by Greaves, p. 84.) Nevertheless, as it is clear, from a variety of recent cases, that the offence would be complete, although C. D. and E. F. never had any previous dealings (the questions being simply whether the act was fraudulently done, and whether the property was in fact obtained by means of that fraud), it is unnecessary to allege or prove any previous situation of the parties, or any facts showing that the fraud was the *natural consequence* of the false pretence: (see *Hamilton v. The Queen*, 19 Q. B. 271; 16 L. J., N. S., 9, M. C.)

It is to be observed that, upon this indictment for the actual fraud, the defendant may be convicted of an attempt to commit the misdemeanor, if it appears that the offence was not completed: (14 & 15 Vict. c. 100, s. 9.)

The word "knowingly," in the indictment, is not absolutely necessary, nor is it necessary to allege that the defendant knew the pretence was false: (see *Reg. v. Coulson*, 19 L. J., N. S., 182, M. C.; S. C., 4 Cox Crim. Cas. 227; *Reg. v. Bowen*, 19 L. J., N. S., 65, M. C.)

As, notwithstanding the provision in the recent statute (14 & 15 Vict. c. 100, s. 12), enacting that a person tried for a misdemeanor is not to be acquitted, if the offence turn out to be felony, there may be some doubt whether a court of quarter sessions has jurisdiction to try a defendant, where he has been guilty of forgery, on an indictment framed for a misdemeanor, forms of indictments for obtaining money by false pretences, under those circumstances, have been purposely omitted in the present series.]

No. XLII.

Obtaining Money by means of false pretences.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully, knowingly and
designedly did falsely pretend to C. D. that the sum of five pounds was
then due and owing by and from the said C. D. to the said A. B., for
goods before then sold and delivered by the said A. B. to the said C. D.,
by means of which said false pretence the said A. B. did then unlaw-
fully obtain from the said C. D. certain money, to wit, the sum of five
pounds, the moneys of the said C. D., with intent to defraud: whereas
in truth and in fact the sum of five pounds was not, nor was any part
thereof, due or owing by or from the said C. D. to the said A. B. for
goods before then sold and delivered, or for, upon, or by reason of any
contract or account whatsoever; and whereas in truth and in fact there
was not any money whatever then due or owing to the said A. B. by
the said C. D., as he the said A. B. then well knew; against the form
of the statute in such case made and provided.

[See judgment of Lord Campbell, C. J., in *Reg. v. Woolley*, 19 L. J., N. S., 168, M. C.; and see as to the description of money the statute 14 & 15 Vict. c. 100, s. 18, which enacts that "in every indictment in which it shall be necessary to make any averment as to any money or any note of the Bank of England, or any other bank, it shall be sufficient to describe such money or bank note simply as money, without specifying any particular coin or bank note; and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank note, although the particular species of coin of which such amount was composed, or the particular nature of the bank note shall not be proved; and in case of embezzlement and obtaining money or bank notes by false pretences, by proof

Precedents.
2. *Misdemeanors*

that the offender embezzled or obtained any piece of coin or any bank note, or any portion of the value thereof, although such piece of coin or bank note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, or to any other person, and such part shall have been returned accordingly." Mr. Greaves says: "This section was framed upon the 7 & 8 Geo. 4, c. 29, s. 48, and was intended to meet the case of *Reg. v. Bond* (1 D. C. C. 517.) It originally applied to money and valuable securities, the same as the section from which it was taken; but it was thought better that it should only extend to coin and the notes of the Bank of England and other banks. In these cases it is sufficient in any indictment whatever, where it is necessary to make any averment as to any coin or bank note, to describe such coin or note simply as money, without specifying any particular coin or note; and such an allegation will be supported by proof of any amount, although the species of coin or the nature of the note be not proved. The latter part of the clause was framed to meet two cases; first, where by false pretences a party obtained a note or coin, and returned part of the value to the person from whom it was obtained, or some other person; some doubt existing as to the correctness of the decision in *Reg. v. Leonard* (1 D. C. C. 304; 2 C. & K. 514.) Secondly, where a party embezzled a note or coin after having returned part of its value to a different person from the person from whom he received it, the 7 & 8 Geo. 4, c. 29, s. 48, only applying to the case where part of the value was returned to the party delivering the note or coin to the prisoner." (Lord Campbell's Acts, by Greaves, pp. 20, 21, and see *ante*, p. xv., note to form No. XXXIV., Part I.) Although the latter part of the section may have been framed to remove any doubt as to the correctness of the decision in *Reg. v. Leonard*, it does not appear, as it now stands, to assist that case. There the first count of the indictment (upon which the decision was given) alleged the obtaining a cheque by false pretences, with intent to defraud of the same; the proof being an intent and defrauding with respect only to a small portion of the proceeds, and the proof was held to support the indictment. That case, it is apprehended, is not affected either by the above section or by the 8th. (See that section in the note to the last form, No. XLI.; see also the note to form No. LVII., *post*.)

Where a coin or bank note of a larger amount than the defendant sought to obtain has been delivered to him, and he has returned the difference in change, it seems that the indictment should charge the smaller sum as having been obtained by means of the pretence, for the difficulty, which formerly occurred in such a case from the necessity of specifying some particular coin (see *Reg. v. Blomfield*, Car. & Mar. 537, and *Reg. v. Bond*, 1 D. C. C. R. 517; S. C. 4 Cox Crim. Cas. 321), has been removed by the 18th section of the 14 & 15 Vict. c. 100, above set out.]

No. XLIII.

Against more than one Person for obtaining Goods by false pretences.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., C. D. and E. F. on
the day of in the year of our Lord 1853, unlawfully, know-
ingly and designedly did falsely pretend to G. H. that the said A. B.
was then a clerk in the employment of J. K., by means of which said
false pretence the said A. B., C. D. and E. F. did then unlawfully obtain
from the said G. H. twenty pounds weight of cheese, twelve pounds
weight of bacon, and eight pounds weight of butter, the goods and chattels
of the said G. H., with intent to defraud: whereas in truth and in fact
the said A. B. was not then a clerk in the employment of J. K. as they
the said A. B., C. D. and E. F. then well knew, against the form of the
statute in such case made and provided.

[Where more than one person is charged with obtaining money by means of false pretences it is in general advisable to insert in the indictment a count for conspiracy (as in the form No. LXIX, *post*), for the evidence may sometimes be sufficient to convict of a conspiracy to defraud where it is, from some technical defect or otherwise, insufficient to support a count for the statutable offence.]

No. XLIV.

Obtaining Money and Goods by means of a flash note.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully, knowingly and
designedly did falsely pretend to C. D. that a certain printed paper, then
produced by the said A. B. and offered and given by him to the said
C. D. in payment for certain pigs before then agreed to be sold by the said
C. D. to the said A. B., was a good and valid promissory note for the pay-
ment of five pounds; by means of which said false pretence the said A. B.
did then unlawfully obtain from the said C. D. five pigs of the value of
three pounds seventeen shillings and sixpence, and certain money, to wit,
the sum of one pound two shillings and sixpence, of the goods, chattels and
moneys of the said C. D., with intent to defraud. Whereas in truth and in
fact the said printed paper was not a good and valid promissory note for
the payment of the sum of five pounds, or for the payment of any sum
whatever, as he the said A. B. then well knew; against the form of the
statute in such case made and provided.

[See *Reg. v. Coulson*, 19 L. J., N. S., 182, M. C.]

No. XLV.

Obtaining Money by means of a Promissory Note of a bank which has stopped payment.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully, knowingly and
designedly did falsely pretend to C. D. that a certain paper writing,
partly printed and partly written, purporting to be a bank note for the
payment of five pounds, and to have been issued by a certain firm carry-
ing on business as bankers under the name and style of The Bank,
then produced by the said A. B., and offered by him to the said C. D. in
exchange for five sovereigns, was then of the value of five pounds, and
was then a promissory note of a bank the notes of which were then in
circulation, and that there was a firm then carrying on business under the
name and style of The Bank, and that the said bank note was then
a good, valid and available security for the payment of five pounds; by
means of which said false pretences the said A. B. did then unlawfully
obtain from the said C. D. certain money, to wit, the sum of five pounds,
the moneys of the said C. D., with intent to defraud. Whereas in truth
and in fact the said paper writing was not then of the value of five
pounds; and whereas in truth and in fact the said printed paper was not
then a promissory note of a bank the notes of which were then in circ-
ulation; and whereas in truth and in fact there was not any firm then
carrying on business under the name and style of The Bank; and

Precedents. whereas in truth and in fact the said printed paper was not then a good, valid and available security for the payment of five pounds, or for the payment of any sum whatever, as he the said A. B. then well knew; against the form of the statute in such case made and provided.

2 *Misdemeanors*

[See observation of Bolland, B., in *Rez v. Barnard*, 7 C. & P. 784; see also *Rez v. Spencer*, 3 C. & P. 420.]

No. XLVI.

Obtaining Goods by cheque on a bank where Defendant had no effects.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully, knowingly and
designedly, did falsely pretend to C. D. that a certain paper writing
produced by the said A. B. to the said C. D., and purporting to be a
cheque drawn by the said A. B. upon Messieurs E. F. and Company,
bankers, for the payment to the bearer of the sum of twenty-five
pounds, was then a good, genuine, and available order for payment of
the sum of twenty-five pounds, and was then of the value of twenty-five
pounds; and that he the said A. B. kept an account with the said
Messieurs E. F. and Company, and that he the said A. B. had money
in the hands of the said Messieurs E. F. and Company for the payment
of the said cheque, and that he the said A. B. had full power, right and
authority to draw cheques upon the said Messieurs E. F. and Company;
by means of which said false pretences the said A. B. did then unlaw-
fully obtain from the said C. D. a gold watch and a gold chain, of the
goods and chattels of the said C. D., with intent to defraud. Whereas
in truth and in fact the said paper writing was not then a good,
genuine and available order for payment of the sum of twenty-five
pounds, nor was the same then of the value of twenty-five pounds; and
whereas in truth and in fact the said A. B. did not keep any account
with the said Messieurs E. F. and Company; and whereas in truth
and in fact the said A. B. had not any money in the hands of the said
Messieurs E. F. and Company for the payment of the said cheque; and
whereas in truth and in fact the said A. B. had not any power, right or
authority to draw cheques upon the said Messieurs E. F. and Company,
as he the said A. B. then well knew; against the form of the statute in
such case made and provided.

[See *Rez v. Jackson*, 3 Campbell, 370. This indictment is framed with reference to *Parker's case*, 2 Moody C. C. R. 1; 7 C. & P. 825; and Mr. Greaves' note in his edition of *Russell on Crimes*, vol. ii., p. 300, n. (f)]

No. XLVII.

Obtaining Money by false statement of authority to receive debts.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully, knowingly and
designedly did falsely pretend to C. D. that he the said A. B. was then
in partnership with E. F., and that he the said A. B. was then autho-
rized to receive debts due to the said E. F.; by means of which said false
pretences, the said A. B. did then unlawfully obtain from the said C. D.
the sum of four pounds and sixteen shillings, of the moneys of the said
C. D., with intent to defraud. Whereas in truth and in fact the said
A. B. was not then in partnership with the said E. F.; and whereas in
truth and in fact the said A. B. was not then authorized to receive debts
due to the said E. F., as he the said A. B. then well knew; against the
form of the statute in such case made and provided.

No. XLVIII.

Obtaining Money by pretence of a payment to a third person.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully, knowingly and
designedly did falsely pretend to C. D. that he the said A. B. had paid
to E. F. the sum of ten shillings; by means of which said false pretence
the said A. B. did then unlawfully obtain from the said C. D. the sum
of ten shillings of the moneys of the said C. D., with intent to defraud.
Whereas in truth and in fact the said A. B. had not paid to the said
E. F. the sum of ten shillings, as he the said A. B. then well knew;
against the form of the statute in such case made and provided.

[See *Rex v. Pleslow*, 1 Camp. 494.]

No. XLIX.

Obtaining Money by false pretences as to the name and circumstances of the Defendant.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully, knowingly and
designedly did falsely pretend to C. D. that he the said A. B. was
F. F., and that he the said A. B. was a ruined merchant, and in ill
health; and that he the said A. B. had been bred to mercantile pur-
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—
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suits; and that he the said A. B. lost a large sum of money by the upsetting of a vessel; by means of which said false pretences the said A. B. did then unlawfully obtain from the said C. D. the sum of five pounds, of the moneys of the said C. D., with intent to defraud. Whereas in truth and in fact the said A. B. was not E. F.; and whereas in truth and in fact the said A. B. was not a ruined merchant, nor was the said A. B. in ill health; and whereas in truth and in fact the said A. B. had not been bred to mercantile pursuits; and whereas in truth and in fact the said A. B. had not lost a large sum of money, or any money whatever, by the upsetting of a vessel, as he the said A. B. then well knew; against the form of the statute in such case made and provided.

[Obtaining money by means of false statements of the name and circumstances of the defendant or of a third person, either in a begging letter or by personal representations, is within the statute: (see *Reg. v. Jones*, 1 Den. C. C. 551; 4 Cox C. C. 198.) If the money were obtained by the medium of a letter a count should be added similar to the second count in the next form.]

No. L.

Obtaining a Post-office Order by a begging letter, purporting to be written on behalf of a third person.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B. on the day
of , in the year of our Lord 1853, unlawfully, knowingly and
designedly did falsely pretend to C. D. that he the said A. B. was E. F.,
a doctor of medicine, and that he the said A. B. had been requested by
one G. H. to write to the said C. D. on behalf of the said G. H., and that
the said G. H. had been advised to endeavour to obtain admission to an
hospital, and that the said G. H. was in very distressed circumstances,
and was unable to pay the expenses of his removal, and that the said
G. H. was also in debt to his landlord and other persons, and that he the
said A. B. had given the said G. H. some linen and thirty shillings in
money; by means of which said false pretences the said A. B. did then
unlawfully obtain from the said C. D. a post-office order for the sum of
three pounds of the goods and chattels of the said C. D., with intent to
defraud. Whereas in truth and in fact the said A. B. was not E. F., a
doctor of medicine; and whereas in truth and in fact there was no such
person as the said E. F., a physician; and whereas in truth and in fact
the said A. B. had not been requested by one G. H. to write to the said
C. D. on behalf of the said G. H., or for any other purpose whatever;
and whereas in truth and in fact there was not any such person as the said
E. F.; and whereas in truth and in fact the said A. B. had not given any
linen or any money whatever to the said E. F. as he the said A. B. then
well knew; against the form of the statute in such case made and provided.

Second Count.—And the jurors aforesaid, upon their oath aforesaid,
do further present that the said A. B. on the day and year aforesaid, un-
lawfully, knowingly and designedly did falsely pretend to C. D. that a
certain letter then sent by the said A. B. to the said C. D., was written
by one E. F., a doctor of medicine; by means of which said false pre-
tence the said A. B. did then unlawfully obtain from the said C. D. a

post-office order for the sum of three pounds of the goods and chattels of the said C. D., with intent to defraud. Whereas in truth and in fact the said letter was not written by one E. F., a doctor of medicine ; and whereas in truth and in fact the said letter was written by the said A. B. as he the said A. B. then well knew ; against the form of the statute in such case made and provided.

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2. Misdemeanors

[See *Reg. v. Jones*, cited in the note to the last form.]

No. LI.

Obtaining Money by personating another.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B. on the day
of , in the year of our Lord 1853, unlawfully, knowingly and
designedly did falsely pretend to E., the wife of C. D., that he the said
A. B. was F. G., and that he was the same person that had cured H. I.;
by means of which said false pretences the said A. B. did then unlawfully
obtain from the said E. the sum of five shillings, the money of the said
C. D., with intent to defraud. Whereas in truth and in fact the said
A. B. was not F. G.; and whereas in truth and in fact the said A. B.
was not the same person that had cured H. I., as he the said A. B. then
well knew; against the form of the statute in such case made and provided.

[See *Reg. v. Bloomfield*, Car. & Mar. 537 ; and see note to form No. XLII.]

No. LII.

Obtaining Money by false representations as to the employment and condition of the Defendant.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully, knowingly and
designedly did falsely pretend to C. D. that he the said A. B. was then
employed by one E. F. to drive some cattle from Wales to London for
the said E. F., and that he the said A. B. had been detained by the
weather and the state of the roads until all his money was gone, and that
he the said A. B. was without any money to enable him to proceed on
his journey; by means of which said false pretences the said A. B. did
then unlawfully obtain from the said C. D. the sum of two pounds of the
moneys of the said C. D. with intent to defraud. Whereas in truth and
in fact the said A. B. was not then employed by the said E. F. to drive
some cattle from Wales to London ; and whereas in truth and in fact the

Precedents. A. B. was not then employed to drive any cattle whatever ; and whereas
 2. *Misdemeanors* in truth and in fact the said A. B. had not been detained by the weather
 and the state of the roads, as he said A. B. then well knew ; against the
 form of the statute in such case made and provided.

[See *Rex v. Villeneuve*, cited 2 East P. C. 380.]

No. LIII.

Obtaining a Horse by false representations.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B. on the day
 of , in the year of our Lord 1853, unlawfully, knowingly and
 designedly did falsely pretend to C. D. that he the said A. B. was then
 the servant of a gentleman living at , and that he the said A. B.
 was then employed to purchase horses for his master, and that he the
 said A. B. had purchased several horses at fair for his master ; by
 means of which said false pretences the said A. B. did then unlawfully
 obtain from the said C. D. a filly, the property of the said C. D., with
 intent to defraud. Whereas in truth and in fact the said A. B. was not
 then the servant of any gentleman living at ; and whereas in
 truth and in fact the said A. B. was not then employed to purchase horses
 for his master ; and whereas in truth and in fact the said A. B. had not
 purchased any horses at fair for his master, as he the said A. B.
 then well knew ; against the form of the statute in such case made and
 provided.

[See *Rex v. Dale*, 7 C. & P. 372.]

No. LIV.

Obtaining Goods by falsely pretending that the Defendant was a Trader in solvent circumstances.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., on the day
 of , in the year of our Lord 1853, unlawfully, knowingly and
 designedly did falsely pretend to C. D. that he the said A. B. was a
 member of a certain firm carrying on business at by and under
 the name, style and firm of E. F. and Company, and that the said last
 mentioned firm of E. F. and Company was then in solvent circumstances,
 and had then, to wit, on the said day of in the year aforesaid, a
 balance in its favour of two thousand pounds ; by means of which said
 false pretences the said A. B. did then unlawfully obtain from the said
 C. D. one hundred china plates, fifty china dishes, fifty china dish-covers,

one hundred china tea-cups, one hundred china tea-saucers, twenty china jugs, twenty china basins, twenty china bowls, and five hundred pieces of china ware, and two crates, the property of the said C. D. and others, with intent to defraud. Whereas in truth and in fact the firm of E. F. and Company was not then in solvent circumstances; and whereas in truth and in fact the said firm of E. F. and Company had not at the time the said A. B. so falsely pretended as aforesaid, a balance in their favour of two thousand pounds, as the said A. B. then well knew; against the form of the statute in such case made and provided.

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2. Misdemeanors

[See *Reg. v. Kealey*, 2 Den. C. C. 68; 5 Cox C. C. 193.]

No. LV.

Obtaining Money by false allegations of delivery of goods.

STAFFORDSHIRE, { THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully, knowingly and
designedly did falsely pretend to C. D. that he the said A. B. had carried
certain goods of the said C. D. from to , and had delivered
the said goods to E. F., and that the said E. F. had given him the said
A. B. a written receipt for the said goods, and that he the said A. B.
had either lost or mislaid the said receipt or left it at home; by means of
which said false pretences the said A. B. did then unlawfully obtain from
the said C. D. the sum of four shillings and sixpence of the moneys of
the said C. D., with intent to defraud. Whereas in truth and in fact the
said A. B. had not carried the said goods of the said C. D., or any part
thereof, from to ; and whereas in truth and in fact the said
A. B. had not delivered the said goods to E. F.; and whereas in truth
and in fact the said E. F. had not given the said A. B. any written
receipt for the said goods, or for any goods whatever; and whereas in
truth and in fact the said A. B. never had in his possession any receipt
for the said goods from the said E. F. or from any other person, as he the
said A. B. then well knew; against the form of the statute in such case
made and provided.

[See *Reg v. Airy*, 2 East, 30.]

No. LVI.

Obtaining Money by a false pretence as to the amount due for carriage of a parcel.

STAFFORDSHIRE, { THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully, knowingly and

Precedents.
 2. *Misdemeanors* designedly, did falsely pretend to C. D., the servant of E. F., that the sum of nine shillings and tenpence had been charged, and was then due and payable for the carriage and portorage of a certain parcel then brought by the said A. B. for the said E. F., and then delivered to the said C. D. by the said A. B., and that he the said A. B. was then authorized and directed to receive and take the sum of nine shillings and tenpence for the carriage and portorage of the said parcel; by means of which said false pretences the said A. B. did then unlawfully obtain from the said C. D. the sum of three shillings and fourpence of the moneys of E. F., with intent to defraud. Whereas in truth and in fact the sum of nine shillings and tenpence had not been charged, nor was the said sum of nine shillings and tenpence then due and payable for the carriage and portorage of the said parcel; and whereas in truth and in fact the said A. B. was not then authorized or directed to receive or take the sum of nine shillings and tenpence for the carriage and portorage of the said parcel; and whereas in truth and in fact the sum of six shillings and sixpence, and no more, was then due and payable for the carriage and portorage of the said parcel, as he the said A. B. then well knew; against the form of the statute in such case made and provided.

[See *Rea v. Douglas*, 1 Camp. 212.]

No. LVII.

Obtaining Money by rendering a false account of work done by third parties.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that at the time of the making
 the false pretences hereinafter mentioned, A. B. was the servant of one
 C. D., and that it was the duty of the said A. B., as such servant, to
 render a true and correct account of the work done by and money due to
 the workmen of the said C. D. And the jurors aforesaid, upon their
 oath aforesaid, do further present that the said A. B., on the day
 of , in the year of our Lord 1853, unlawfully, knowingly, and
 designedly did falsely pretend to the said C. D. that a certain account
 kept by the said A. B., and then shown by him to the said C. D., was a
 true and correct account, and that the sum of fourteen pounds one
 shilling and twopence was then due in respect of work performed by
 the workmen of the said C. D., for and on account of the said C. D.;
 by means of which said false pretences the said A. B. did then unlaw-
 fully obtain from the said C. D. the sum of seven shillings, the moneys
 of the said C. D., with intent to defraud. Whereas in truth and in
 fact the said account shown by the said A. B. to the said C. D. was
 not a true and correct account; and whereas in truth and in fact
 the sum of fourteen pounds one shilling and tenpence was not then
 due in respect of work performed by the workmen of the said C. D., for
 and on account of the said C. D., as he the said A. B. then well
 knew; against the form of the statute in such case made and provided.

[See *R. v. Mitchell*, 2 East P. C. 830. This seems to be the proper form where a part of the sum was due to the workmen, and the fraud was only in respect of the remainder. As the

offence is obtaining the money by false pretences with intent to defraud of the same (see the statute 7 & 8 Geo. 4, c. 29, s. 5, *note* to form No. XLI., *ante*), it might be objected that the evidence in the above case would not support an averment that the defendant unlawfully obtained the whole 14*l.* 1*s.* 10*d.* with intent to defraud; for that, although the allegation of an intent to defraud generally is sufficient by the statute 14 & 15 Vict. c. 100 (see *note* to form No. XLI., *ante*), the last-mentioned statute does not alter the offence itself created by the statute 7 & 8 Geo. 4. Nor does the 18th section of the same statute (14 & 15 Vict. c. 100) seem applicable to this case, for it only applies to the description of the property, and does not say that an averment of obtaining a given sum by means of false pretences shall be supported by proof of an intent to defraud of another sum. Still, there does not appear to be any sound reason for a distinction in this respect between the offence of obtaining money by false pretences and larceny of money, where proof of stealing part would support an indictment charging the stealing of a larger sum. If, instead of the 14*l.* 1*s.* 10*d.* having been paid in money to the defendant, a cheque for the amount was given to him, it seems the indictment might allege that the cheque was obtained by false pretences, because the intent would have been to defraud C. D. of that cheque, though only with a view to misappropriate part of the proceeds: (see *Reg. v. Leonard*, 1 Den. C. C. 304, 306, *note* (a).]

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No. LVIII.

Obtaining a Cheque by means of false pretences.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully, knowingly and
designedly did falsely pretend to one C. D. that he the said A. B. then
was a captain in Her Majesty's Regiment of ; by means of
which said false pretence the said A. B. did then unlawfully obtain from
the said C. D. a certain valuable security, to wit, an order for the pay-
ment of the sum of £ , the property of the said C. D., with intent
to defraud. Whereas in truth and in fact the said A. B. was not then a
captain in Her Majesty's said Regiment of , as he the said
A. B. then well knew; against the form of the statute in such case
made and provided.

[See *Hamilton v. The Queen*, 9 Q. B. 271; 16 L. J., N. S.; 9, M. C.; and see the note to the next form.]

No. LIX.

Obtaining a Bill of Exchange by means of false pretences.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully, knowingly and
designedly did falsely pretend to one C. D. that he the said A. B. was
then the clerk of one E. F., and that he the said A. B. was then sent
by the said E. F. to the said C. D. for a bill of exchange for £ ; by
means of which said false pretences the said A. B. did then unlawfully
obtain from the said C. D. a valuable security, to wit, a certain bill of

Precedents. exchange, the property of the said C. D., with intent to defraud. Whereas
 2. *Misdemeanors* in truth and in fact the said A. B. was not then the clerk of E. F; and
 whereas in truth and in fact the said A. B. was not then sent by E. F. to the said C. D. for the said bill of exchange, as the said A. B. then well knew; against the form of the statute in such case made and provided.

[The statute 14 & 15 Vict. c. 100, s. 5, enacts, that "in any indictment for forging, uttering, stealing, or obtaining by false pretences, any instrument, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or *fac simile* thereof, or otherwise describing the same or the value thereof."]

No. LX.

Obtaining Money by falsely pretending that a member of a Friendly Society was indebted to the Society.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that at the time of making
 the false pretence hereinafter mentioned, A. B. was secretary to the Earl of Uxbridge Lodge of Odd Fellows at Burton-upon-Trent, and that C. D. was a member of the said lodge. And that, on the day of , in the year of our Lord 1853, the said A. B. unlawfully, knowingly and designedly did falsely pretend to the said C. D. that the sum of thirteen shillings and ninepence was then due from the said C. D. to the said lodge; by means of which said false pretence the said A. B. did then unlawfully obtain from the said C. D. the sum of eleven shillings and sevenpence, of the moneys of the said C. D., with intent to defraud. Whereas in truth and in fact the sum of thirteen shillings and ninepence was not then due from the said C. D. to the said lodge; and whereas in truth and in fact the sum of two shillings and twopence, and no more, was then due from the said C. D. to the said lodge, as he the said A. B. then well knew; against the form of the statute in such case made and provided.

[See *Reg. v. Woolley*, 4 Cox C. C. 193; 19 L. J. 168, M. C., and see the note to form No. XLII.]

No. LXI.

Falsely pretending that the Rules of a Friendly Society had been duly certified.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., on the day of , in the year of our Lord 1853, unlawfully, knowingly and designedly did falsely pretend to one C. D. that John Tidd Pratt, Esquire, the barrister-at-law for the time being appointed to certify the rules of the savings banks, had certified that the rules of a certain Friendly

Society (that is to say), a certain sick society, who had agreed to meet at the house of the said C. D., at _____, in the county of Stafford, were in conformity to law, and with the provisions of the act tenth of George the Fourth, chapter fifty-six, as amended by the act fourth and fifth William the Fourth, chapter forty, and that he the said A. B. had paid to the said John Tidd Pratt the sum of one guinea for such certificate; by means of which said several false pretences the said A. B. did then unlawfully obtain from the said C. D. the sum of twenty-one shillings of lawful money of Great Britain, of the moneys of E. F. and others, with the intent thereby to defraud. Whereas in truth and in fact the said John Tidd Pratt had not certified that the rules of the said society were in conformity to law, and with the provisions of the said act the tenth of George the Fourth, chapter fifty-six, as amended by the act of the fourth and fifth of William the Fourth, chapter forty, as he the said A. B. then well knew; and whereas in truth and in fact the said rules had not at any time been submitted to the said John Tidd Pratt for the purpose of his so certifying as aforesaid, as he the said A. B. then well knew; and whereas in truth and in fact the said A. B. had not paid to the said John Tidd Pratt the sum of one guinea, or any sum of money whatsoever for such certificate as aforesaid; to the great damage and deception of the said C. D., and against the form of the statute in such case made and provided.

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No. LXII.

Obtaining Money by means of a false Warranty of the weight of goods.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the _____ day
of _____, in the year of our Lord 1853, unlawfully, knowingly and
designedly did falsely pretend to C. D. that a certain quantity of coals
which he the said A. B. then delivered to the said C. D., weighed one
ton and ten hundred weight, and that the said coals were then worth the
sum of fifteen shillings; by means of which said false pretences the said
A. B. did then unlawfully obtain from the said C. D. the sum of two
shillings and sixpence, the money of the said C. D., with intent to
defraud. Whereas in truth and in fact the said coals did not weigh
one ton and ten hundred weight; and whereas in truth and in fact the
said coals were not worth the sum of fifteen shillings; and whereas in
truth and in fact the said coals weighed only one ton and five hundred
weight, and were not worth more than twelve shillings and sixpence,
as he the said A. B. then well knew; against the form of the statute in
such case made and provided.

[Although it was formerly supposed that such a case as the above was not a false pretence within the statute, it is quite clear that it is; and there never was, in fact, any express decision to the contrary; the supposed case of *Rex v. Reed* (7 C. & P. 848), on which such a notion was founded, never having been, in fact, considered by the judges: (see per Lord Denman, C. J., in *Reg. v. Hamilton*, 9 Q. B. 271.)]

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No. LXIII.

Obtaining Money by a false Warranty of Goods.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully, knowingly and
designedly did falsely pretend to C. D. that a watch, then produced by
the said A. B., and offered for sale to the said C. D., was a silver watch,
and was then of the value of fifty shillings; by means of which said false
pretences the said A. B. did then unlawfully obtain from the said C. D.
the sum of fifty shillings, the money of the said C. D., with intent to
defraud. Whereas, in truth and in fact, the said watch was not a silver
watch, nor was the same then of the value of fifty shillings, as he the
said A. B. then well knew; against the form of the statute in such case
made and provided.

[See *Reg. v. Ball*, Car. & Mar. 249.]

No. LXIV.

Falsely pretending that Goods were of a particular quality.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., at the time of the
making of the false pretences by him hereinafter mentioned, had in his
possession and offered for sale, divers pounds weight of cheese of little
value and of inferior quality; and also had in his possession divers pieces
of cheese called "tasters," of good flavour, taste and quality. And the
jurors aforesaid, upon their oath aforesaid, do further present that the said
A. B., being so thereof possessed, on the day of in the year of
our Lord 1853, unlawfully, knowingly and designedly did falsely pretend
to one C. D., that the said pieces of cheese called "tasters," which he the
said A. B. then delivered to the said C. D., were part of the cheese which the
said A. B. then offered for sale, and that the said last-mentioned cheese
was of good and excellent quality, flavour and taste, and that every pound
weight of the said cheese so offered for sale by the said A. B. was of the
value of sixpence halfpenny; by means of which said false pretences
the said A. B. did then unlawfully obtain from the said C. D., certain
money, to wit, the sum of two pounds one shilling and eightpence of the
moneys of the said C. D., with intent to defraud. Whereas in truth and in
fact the said pieces of cheese called "tasters," which the said A. B. deli-
vered to the said C. D., were not part of the cheese which the said A. B.
offered for sale; and whereas in truth and in fact the said cheese offered
for sale was not of good and excellent quality, flavour and taste; and
whereas in truth and in fact every pound weight of the said cheese
offered for sale by the said A. B. was not of the value of sixpence half-
penny, as he the said A. B. then well knew; against the form of the
statute in such case made and provided.

[See *Reg. v. Abbott*, 1 Den. C. C. 273.]

No. LXV.

Attempting to obtain Money by means of false pretences.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully, knowingly and
designedly did falsely pretend to C. D. that he the said A. B. was then
sent to him the said C. D. by one E. F. to request the loan of ten
shillings, and that the said E. F. desired the said A. B. to say that he
the said E. F. would repay the same to the said C. D. on the next fol-
lowing day; by means of which said false pretences the said A. B. did
then unlawfully attempt and endeavour to obtain from the said C. D.
certain money, to wit, the sum of ten shillings of the moneys of the
said C. D., with intent to defraud. Whereas in truth and in fact the said
A. B. was not sent to him the said C. D. by the said E. F. to request
the loan of ten shillings or any other sum of money; and whereas in
truth and in fact the said E. F. did not say or desire the said A. B. to
say that he the said E. F. would repay the same to him the said C. D.
on the next following day, as he the said A. B. then well knew, against
the form of the statute in such case made and provided.

No. LXVI.

Selling by false Scales.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., at the time of com-
mitting the offence hereinafter mentioned, exercised and carried on the
trade and business of a grocer, and sold divers goods, wares and mer-
chandizes by weight, and that the said A. B. on the day of in
the year of our Lord 1853, and on divers other days and times, know-
ingly, fraudulently and deceitfully did keep and use in a certain shop
wherein he the said A. B. carried on his said trade, a certain false and
deceitful pair of scales for the weighing of his goods, wares and mer-
chandizes, sold in the way of his said trade, which said scales were
then by artful and deceitful ways and means so constructed as to cause
the goods, wares and merchandizes weighed in and sold thereby to
appear of greater weight, to wit, of greater weight by one ounce in
every quantity of goods weighed thereby than the real and true weight
thereof, as he the said A. B. then well knew, with intent to defraud
all persons resorting to his said shop.

[The use of false weights, measures, and tokens, is indictable at common law, being of a public nature and calculated to deceive numbers. And a single instance of selling by false weights is an indictable offence at common law; but merely selling a less quantity than is pretended, without the use of a false weight or measure, is not indictable at common law, but is punishable as a false pretence under the statute 7 & 8 Geo. 4, c. 29, s. 53: (see *ante*, note to form No. XLI.)

By the statute 14 & 15 Vict. c. 100, where any person is convicted (as an indictable misde-

Precedents.

meanor) of "any cheat or fraud punishable at common law," hard labour may be imposed as part of the punishment.]

2. *Misdemeanors*

No. LXVII.

Selling by false Weights.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., at the time of
committing the offence hereinafter mentioned, exercised and carried on
the trade and business of a buttermen and cheesemonger, and sold butter
and cheese by weight; and that the said A. B., on the day
of , in the year of our Lord 1853, and on divers other days and
times, knowingly, fraudulently and deceitfully did keep, use and repre-
sent, in a certain shop wherein he the said A. B. carried on his said
trade, as and for a standard and lawful pound weight, a certain false and
deceitful weight for the weighing of his butter and cheese sold in the
way of his said trade, which said false weight was then, by artful and
deceitful ways and means, so constructed as to cause the goods weighed
and sold thereby to appear of greater weight by one ounce in every six-
teen ounces weight of goods weighed thereby, than the real and true
weight thereof, as he the said A. B. then well knew; with intent to
defraud all persons resorting to his said shop.

[This form and the next are given, although the offence of using other than standard weights and measures is generally punished summarily under the 5 & 6 Will. 4, c. 63.]

No. LXVIII.

Selling by false Measures.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., at the time of com-
mitting the offence hereinafter mentioned, exercised and carried on the
business of a public-house keeper, and sold ale and beer by measure;
and that the said A. B., on the day of , in the year of
our Lord 1853, and on divers other days and times, knowingly, fraudu-
lently and deceitfully did keep and use in his public-house wherein he
carried on his said business, as and for a standard and lawful quart
measure, a certain false and deceitful measure for the measuring of his
ale and beer sold in the way of his said business, which said false
measure was then by artful and deceitful ways and means so constructed
as to cause the ale and beer measured in and sold thereby to appear of
greater measure and quantity by one quarter-of-a-pint in every quart
measure of ale and beer sold thereby than the real and true standard
measure thereof, as he the said A. B. then well knew; with intent to
defraud all persons resorting to his said shop.

No. LXIX.

General Count for Conspiracy to defraud of Money.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B. and C. D., on
 the day of , in the year of our Lord, 1853, unlawfully
 and fraudulently did conspire and agree together to obtain and acquire to
 themselves, by divers false pretences, and subtle means and devices, of
 and from E. F. divers large sums of money of the moneys of the said
 E. F., and to cheat and defraud him thereof.

[See *Rees v. Gill*, 2 B. & Ald. 204. This is the most general form of indictment that can be safely drawn: see observations of Lord Denman, C. J., and Williams, J., in *Reg. v. Parker*, 3 Q. B. Rep. 296, 299; and see *Reg. v. Rowlands*, 5 Cox Crim. Cas. 437; *Reg. v. Whitehouse*, *ib.* vol. 6, p. 38. If the circumstances admit of it, counts may be added for conspiracy, showing overt acts, together with one or more counts for obtaining money by means of false pretences.]

No. LXX.

General Count for Conspiracy to defraud of Goods.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B. and C. D., on
 the day of , in the year of our Lord 1853, unlawfully, frau-
 dulently and deceitfully did conspire and agree together to obtain and
 acquire to themselves, by divers false pretences and subtle means and
 devices, of and from E. F. and G. H. divers goods and chattels, the
 property of the said E. F. and G. H. respectively, and to cheat and
 defraud them respectively thereof.

[See the note to the last form. If the conspiracy was not directed in the first instance against particular persons, but against a class, the individuals not being then ascertained, a count as in the next form should be substituted for or added to the above.]

No. LXXI.

General Count for Conspiracy to cheat Tradesmen generally, of their Goods.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., C. D., and E. F.,
 on the day of , in the year of our Lord 1853, unlawfully,
 fraudulently and deceitfully did conspire and agree together to obtain
 and acquire to themselves, by divers subtle means and devices, of and
 from divers tradesmen and persons in business who should thereafter
 bargain with the said A. B., C. D., and E. F., for the sale of goods
 and merchandize of the said tradesmen and persons in business respec-

Precedents. tively, of the said goods and merchandize, the property of the said tradesmen respectively, and to cheat and defraud the said tradesmen and persons in business of their said goods and merchandize.

[See *Reg. v. King*, 7 Q. B. Rep. 782, and *Reg. v. Peck*, 9 A. & E. 686, and see the notes to forms No. LXIX. and LXX.]

No. LXXII.

Conspiracy to obtain Goods by false representations as to property.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B. and C. D., on
the day of , in the year of our Lord 1853, unlawfully and
fraudulently did conspire and agree together to cause it to be believed
that the said A. B., who was then a person in indigent and insolvent
circumstances, carried on an extensive business at , as , and
was a man of large property, and had a large capital engaged in the
said business, and by means of the said belief to obtain and acquire
of and from divers tradesmen and persons in business who should there-
after deal with the said A. B. divers goods, wares and merchandize, the
property of the said tradesmen and persons in business, and to cheat and
defraud them thereof.

[See *Reg. v. Parker*, 3 Q. B. Rep. 294. Add a general count for conspiracy as in No. LXIX., and a count for obtaining goods by false pretences, if the facts will sustain them.]

No. LXXIII.

Conspiracy to cheat and defraud of Goods, setting out overt acts.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., C. D., and E. F.,
being evil-disposed persons, and contriving and intending to cheat and
defraud divers of the liege subjects of our Lady the Queen, of their re-
spective goods and merchandize, on the day of , in the
year of our Lord 1853, unlawfully, wickedly and fraudulently did con-
spire, combine and agree among themselves, and with divers other
persons to the jurors aforesaid unknown, to obtain and acquire, by divers
false pretences and subtle means and devices, of and from G. H. divers
goods and merchandize, the property of the said G. H., with intent to
cheat and defraud him of the said goods and merchandize. And that
in pursuance of the said conspiracy the said A. B. afterwards, to wit, on
the day and year aforesaid, did falsely pretend to the said G. H. that
certain goods which he the said A. B. then purchased from the said
G. H., were for the American trade, and that he said A. B. was going to
send the said goods and merchandize to Liverpool to be there shipped.

And the jurors aforesaid do further present, that in pursuance of the said conspiracy, the said C. D. and E. F. afterwards, to wit, on the day and year aforesaid, did fraudulently receive the said goods so obtained by the said A. B. of and from the said G. H., by the false pretences and representations aforesaid, and did fraudulently secrete and conceal the said goods and merchandize. And so the jurors aforesaid, upon their oath aforesaid, say that the said A. B., C. D., and E. F., in manner and by the means aforesaid, and in pursuance of the said unlawful, wicked and fraudulent conspiracy, did obtain from the said G. H. the goods and merchandize aforesaid, the property of the said G. H., and did cheat and defraud him thereof.

Precedents.

2. Misdemeanors

[See *Reg. v. Parker*, 3 A. & E. 292. Add a general count as in form No. LXX. and a count for obtaining goods by false pretences.]

No. LXXIV.

Conspiracy to obtain Money by false pretences, with a Count for obtaining Money by false pretences.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B. and C. D., being
evil-disposed persons, and seeking to get their living by various subtle, fraudulent and dishonest practices, on the day of , in the year of our Lord 1853, unlawfully, fraudulently and deceitfully did combine, conspire, confederate and agree together, by divers false pretences and subtle means and devices, to obtain and acquire to themselves of and from one E. F., divers large sums of money of the moneys of the said E. F., and to cheat and defraud him thereof.

Second Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said A. B. and C. D., on the day and year in the first count mentioned, unlawfully, knowingly and designedly did falsely pretend to the said E. F. that a certain carriage, to wit, a carriage called a phaeton, and a certain mare, and a certain gelding, which they the said defendants then and there offered for sale to the said E. F., had then been the property of a lady then deceased, and were then the property of her sister, and were not the property of any horse-dealer, and were then the property of a private person, and that the said mare and the said gelding were then respectively quiet to ride and drive, and quiet and tractable in every respect; by means of which said false pretences the said A. B. and the said C. D. did then unlawfully obtain from the said E. F. a cheque, the property of the said E. F., for the payment of one hundred and sixty-eight pounds, with intent to cheat and defraud. Whereas in truth and in fact the said carriage, the said mare, and the said gelding had not then been the property of a lady then deceased, and were not then the property of her sister; and whereas in truth and in fact the said carriage, the said mare, and the said gelding were the property of a horse-dealer; and whereas in truth and in fact the said carriage, the said mare, and the said gelding were not then the property of a private person; and whereas in truth and in fact the said carriage, the said mare, and the said gelding were not then quiet to ride and drive, and

Precedents. were not then quiet and tractable in every respect, as the said A. B. and C. D. then well knew ; against the form of the statute in such case made and provided.
2. Misdemeanors

[See *Reg. v. Kendrick*, 5 Queen's Bench Reports, 49.]

No. LXXV.

Being found by night Armed, with intent to break into a House and commit a Felony therein.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, at the parish of , in the
county of Stafford, was found by night, to wit, at the hour of eleven of
the clock in the night of the same day, armed with a dangerous and
offensive weapon and instrument, to wit, a pistol, with intent then and
there by night as aforesaid, feloniously to break into and enter the
dwelling-house of one C. D. there situate, and feloniously to steal, take
and carry away the goods and chattels of the said C. D., then and there
being in the said dwelling-house ; against the form of the statute in such
case made and provided.

[The statute 14 & 15 Vict. c. 19, s. 1, enacts that "if any person shall be found by night armed with any dangerous or offensive weapon or instrument whatsoever, with intent to break or enter into any dwelling-house or other building whatsoever, and to commit any felony therein; or if any person shall be found by night having in his possession without lawful excuse (the proof of which excuse shall lie on such person) any picklock, key, crow, jack, bit, or other instrument of housebreaking; or if any person shall be found by night having his face blackened or otherwise disguised, with intent to commit any felony; or if any person shall be found by night in any dwelling-house or other building whatsoever, with intent to commit any felony therein, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned, with or without hard labour, for any term not exceeding three years." Sect. 13 enacts that "the time at which the night shall commence and conclude in any offence against the provisions of this act shall be the same as in cases of burglary." By the statute 7 Will. 4 & 1 Vict. c. 86, it is enacted "that, so far as the same is essential to the offence of burglary, the night shall be considered and is hereby declared to commence at nine of the clock in the evening of each day, and to conclude at six of the clock in the morning of the next succeeding day."]

No. LXXVI.

Being found by night in possession of Implements of Housebreaking, without lawful excuse.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, was found by night, to wit, at
the hour of two of the clock in the morning of the same day, having

then in his possession, without lawful excuse, certain implements of housebreaking, to wit, one picklock, one crow, one jack, and one bit; against the form of the statute in such case made and provided. *Precedents.*
2. *Misdemeanors*

[See the note to the last form, No. LXXV. It is unnecessary to show any intent in order to bring a party within the clause of the section on which this indictment is framed. The possession, without excuse, of such implements being considered sufficient evidence of the intent: (see Lord Campbell's Acts, by Greaves, p. 37.) Any instrument, however lawful for the purpose for which it is made and may be used, if capable of assisting in housebreaking, is an "instrument of housebreaking" within the statute, if the defendant had it in his possession for that purpose, which is a question for the jury. Keys are within the express words of the statute, for in reading the section a comma should be interposed between the words "picklock key," &c. (*Reg. v. Oldham*, 21 L. J. 134, M. C.; S. C., 3 C. & K. 246.)]

No. LXXVII.

Being found by night with a Disguised Face, with intent to commit Felony.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, was found by night, to wit, at
the hour of twelve of the clock in the night of the same day, having
his face blackened, with intent then by night as aforesaid, feloniously
and violently to assault one C. D., and then feloniously and violently to
steal, take and carry away the goods and chattels of the said C. D.;
against the form of the statute in such case made and provided.

[See the note to form, No. LXXV.]

No. LXXVIII.

Being found by night in a House, with intent to commit a Felony therein.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, at the parish of , in the
county of Stafford, was found by night, to wit, at the hour of ten of the
clock in the night of the same day, in the dwelling-house of one C. D.
there situate, with intent then and there by night as aforesaid, feloniously
to steal, take and carry away the goods and chattels of the said C. D.,
then and there being in the said dwelling-house; against the form of the
statute in such case made and provided.

[See note to form LXXV.]

Precedents.

2. Misdemeanors

LXXIX.

Being found by night Armed, with intent to break into a House, after a previous conviction for one or other of the offences mentioned in the four last preceding forms.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, at the parish of , in the
county of Stafford, was found by night, to wit, at the hour of one of the
clock in the morning of the same day, armed with a dangerous and
offensive weapon, to wit, a bludgeon, with intent then and there by night
as aforesaid, feloniously to break into and enter the dwelling-house of
one C. D. there situate, and feloniously to steal, take and carry away the
goods and chattels of the said C. D., then and there being in the said
dwelling-house; against the form of the statute in such case made and
provided.

And the jurors aforesaid, upon their oath aforesaid, do further
present, that before the committing of the said misdemeanor, to wit, on
the day of , in the year of our Lord 1853, at the General
Quarter Sessions of the Peace holden at Stafford, in and for the county
of Stafford, the said A. B. was then and there convicted of a misde-
meanor against the "Act for the better Prevention of Offences, 1851,"
and which said conviction is still in force.

[Section 2 of the statute 14 & 15 Vict. c. 19, enacts, that if any person shall be convicted of any misdemeanor mentioned in the 1st section (see note to form LXXV. *ante*), "such person shall on such subsequent conviction be liable, at the discretion of the court, to be transported beyond the seas for any term not less than seven years, and not exceeding ten years, or imprisoned with or without hard labour, for any term not exceeding three years: and in any indictment for such misdemeanor committed after a previous conviction as aforesaid, it shall be sufficient to state that the offender was at a certain time and place convicted of felony or misdemeanor against the act for the better prevention of offences, 1851 (as the case may be), without otherwise describing the previous felony or misdemeanor; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony or misdemeanor, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where the offender was first convicted, or by the deputy of such clerk or officer (for which certificate a fee of five shillings and no more shall be demanded or taken), shall, upon proof of the identity of the person of the offender, be sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed the same."

If the previous conviction were for *felony*, the count in the form No. XI., Part I. (Felonies), will be applicable, but the form of certificate should be in every case inspected before drawing the count for the previous conviction.]

No. LXXX.

Breaking down the Dam of a Fishpond with intent to destroy the fish.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully and maliciously

did break down and destroy the dam of a certain fishpond, the private property of C. D., situate in the parish of _____, in the county of Stafford, with intent thereby then to take and destroy the fish then being in the said pond ; against the form of the statute in such case made and provided.

Precedents.

2. Misdemeanors

[The above and the three following forms are founded on the statute 7 & 8 Geo. 4, c. 30, s. 15, which enacts "that if any person shall unlawfully and maliciously break down or otherwise destroy the dam of any fish-pond, or of any water which shall be private property, or in which there shall be any private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish, or shall unlawfully and maliciously put any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish therein, or shall unlawfully and maliciously break down or otherwise destroy the dam of any mill-pond, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years ; and, if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment."]

No. LXXXI.

Breaking down the Dam of a Fishpond, and thereby causing the loss of fish.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the _____ day
of _____, in the year of our Lord 1853, unlawfully and maliciously
did break down and destroy the dam of a certain fishpond, the private
property of C. D., situate in the parish of _____, in the county of
Stafford, and did thereby then cause the loss and destruction of divers of
the fish then being in the said pond, against the form of the statute in
such case made and provided.

[See the statute 7 & 8 Geo. 4, c. 30, s. 15, note to the last form.]

No. LXXXII.

Putting Lime into a Fishpond.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the _____ day
of _____, in the year of our Lord 1853, unlawfully and maliciously
did put a large quantity of lime into a certain pond of C. D., situate in
the parish of _____ in the county of _____, with intent thereby then
to destroy the fish then being in the said pond ; against the form of the
statute in such case made and provided.

[See the statute 7 & 8 Geo. 4, c. 30, s. 15, note to form LXXXI. ante.]

*Precedents.**2. Misdemeanors*

No. LXXXIII.

Breaking down the Dam of a Mill Pond.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., on the day
 of , in the year of our Lord 1853, unlawfully and maliciously did
 break down and destroy the dam of a certain mill-pond of C. D., situate
 in the parish of , in the county of Stafford ; against the form of the
 statute in such case made and provided.

[See the statute 7 & 8 Geo. 4, c. 30, s. 15, note to form LXXX. ante.]

No. LXXXIV.

Destroying a Turnpike Gate.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., on the day
 of , in the year of our Lord 1853, unlawfully and maliciously did
 throw down, level and destroy a certain turnpike gate, called gate,
 situate in the parish of , in the county of Stafford ; against the form
 of the statute in such case made and provided.

[The statute 7 & 8 Geo. 4, c. 30, s. 14, enacts "that if any person shall unlawfully and maliciously throw down, level or otherwise destroy, in whole or in part, any turnpike gate, or any wall, chain, rail, post, bar, or other fence belonging to any turnpike gate, or set up or erected to prevent passengers passing by without paying any toll directed to be paid by any act or acts of Parliament relating thereto, or any house, building, or weighing engine, erected for the better collection, ascertainment, or security of any such toll, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be punished accordingly."]

No. LXXXV.

Destroying anything kept for the purpose of Art in a Museum.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., on the day
 of , in the year of our Lord 1853, unlawfully and maliciously did
 destroy a certain *urn*, the property of C. D. and others, then kept as an
 object of curiosity in a certain museum, called the Museum, and
 then being therein, which museum then was from time to time open for
 the admission of the public to view the same ; against the form of the
 statute in such case made and provided.

[This and the next form are founded on the statute 8 & 9 Vict. c. 44, which enacts (sect. 1), that "every person who shall unlawfully and maliciously destroy or damage anything kept for the purposes of art, science, or literature, or as an object of curiosity, in any museum, gallery, cabinet, library, or other repository, which museum, gallery, cabinet, library, or other repository

is either at all times, or from time to time, open for the admission of the public or of any considerable number of persons to view the same, either by the permission of the proprietor thereof, or by the payment of money before entering the same; or any picture, statue, monument, or painted glass in any church or chapel, or other place of religious worship; or any statue or monument exposed to public view, shall be guilty of a misdemeanor; and, being duly convicted thereof, shall be liable to be imprisoned for any period not exceeding six months, and, if a male, may, during the period of such imprisonment, be put to hard labour, or be once, twice, or thrice privately whipped, in such manner as the court, before which such person shall be tried, shall direct."

Precedents.

2. Misdemeanors

Sect. 2 enacts, "that every punishment imposed on any person for an offence against this act, shall apply and be enforced whether the offence shall be committed from malice conceived against the owner of the thing damaged or destroyed, or not."

Sect. 3 enacts, that "any person found committing any offence against this act, may be immediately apprehended, without a warrant, by any other person, and forthwith taken before some neighbouring justice of the peace, to be dealt with according to law."

Sect. 4 provides, "that nothing herein contained shall be deemed to affect the right of any person to recover by action at law damages for the injury so committed."

Sect. 5 enacts, "that every person who shall abet, counsel, or procure the commission of any offence against this act, shall be punished as a principal offender."]

No. LXXXVI.

Destroying Painted Glass in a Church.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully and maliciously did
break and destroy *certain painted glass*, then being in St. Mary's church,
situate in the parish of Stafford, in the county of Stafford; against the
form of the statute in such case made and provided.

[See the statute 8 & 9 Vict. c. 44, s. 1, note to the last form. It seems to be unnecessary to allege any ownership in this and the next case.]

No. LXXXVII.

Damaging a Public Statue.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully and maliciously did
damage a certain *statue*, situate at , in the parish of , in the
county of Stafford, and then exposed to public view; against the form of
the statute in such case made and provided.

[See the 8 & 9 Vict. c. 44, note to form No. LXXXV. *ante*; and also the note to the last form.]

*Precedents.*2. *Misdemeanors*

§ 3. OFFENCES OF A PUBLIC NATURE.

No. LXXXVIII.

Riot and Tumult.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., C. D., and E. F.,
together with divers other persons to the jurors aforesaid unknown, on
the day of , in the year of our Lord 1853, unlawfully,
riotously and routously did assemble and gather together at the parish
of , in the county of Stafford, with sticks, staves, and other
offensive weapons, to disturb the peace of our said Lady the Queen, and
being so assembled and gathered together, and being then armed as afore-
said, did then and there unlawfully, riotously and routously make a great
noise, riot and disturbance, and did then and there remain and continue
armed as aforesaid making such noise, riot and disturbance, for the space
of one hour and more, to the great disturbance and terror of divers per-
sons being, residing and passing there.

[See the form of indictment for riot and assault, ante, form No. IV., which it may be
sometimes advisable to join with the above.]

No. LXXXIX.

Riot and pulling down Fences.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., C. D., and E. F.,
together with divers other persons to the jurors aforesaid unknown, on
the day of , in the year of our Lord 1853, unlawfully,
riotously and routously did assemble and gather together at the parish
of , in the county of Stafford, with intent to disturb the peace
of our said Lady the Queen, and being so then and there assembled and
gathered together, did with axes, saws and other offensive weapons,
unlawfully, riotously and routously pull down, cut in pieces, prostrate,
break and destroy divers wooden posts, rails and fences, to wit, one
hundred wooden posts, five hundred yards of wooden railing, twenty
gates, and five hundred yards of fencing then and there erected, and
being to the great damage of the owners of the said posts, rails, gates
and fences, and to the great terror and disturbance of divers of Her
Majesty's subjects inhabiting and dwelling there.

[The facts may sometimes render it advisable to add a count for a riot and tumult according
to the last form.]

No. XC.

Riot, and entering a close and taking Cattle.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., C. D., and E. F.,
together with divers other persons to the jurors aforesaid unknown, on
the day of , in the year of our Lord 1853, did unlawfully,
riotously and routously assemble and gather together at the parish
of , in the county of Stafford, to disturb the peace of our said
Lady the Queen, and being then and there assembled and gathered to-
gether did with sticks, staves and bludgeons, and other offensive weapons,
enter into a certain close in the possession of G. H., there situate, and did
then and there, with intent to injure and oppress the said G. H., unlaw-
fully, riotously and routously, and against the will of the said G. H.,
take, drive and carry away two horses and twenty sheep, the property
of the said G. H., and other wrongs there did to the said G. H.

[It may be sometimes advisable to add a count for riot and tumult as in form No. LXXXVIII.]

No. XCI.

Forcible Entry and Detainer.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that G. H., on the day
of , in the year of our Lord 1853, was seised *in fee of a certain*
messuage and appurtenances situate in the parish of , in the county
of Stafford; and that the said G. H. being so seised thereof, A. B., C. D.,
and E. F., on the day and year aforesaid, at the parish aforesaid,
with force and arms and with strong hand, unlawfully entered into the
said messuage, and with force and arms and with strong hand, unlawfully
expelled and put out the said G. H. from the peaceable possession of the
said messuage; and having so unlawfully and with strong hand expelled
and put out the said G. H. from the possession of the said messuage, with
force and arms and with strong hand, on the day and year aforesaid, and
from thence hitherto, unlawfully did keep out, and still do keep out
the said G. H. from the possession of the said messuage; against the
form of the statutes in such case made and provided.

[The statute 5 Rich. 2, stat. 1, c. 8, enacts, "That none from henceforth make entry into any lands and tenements, but in case where entry is given by the law; and in such case not with strong hand nor with multitude of people, but only in lawful and easy manner; and if any man from henceforth do to the contrary, and thereof be duly convicted, he shall be punished by imprisonment of his body, and thereof ransomed at the king's will." A forcible entry, however, accompanied by a public breach of the peace, is a misdemeanor at common law; but the advantage of an indictment under the statute is, that the prosecutor, if kept out of possession, may, by virtue of subsequent statutes, obtain damages and restitution of his property (see the statutes 8 Hen. 6, c. 9; 31 Eliz. c. 11; and 21 Jac. 1, c. 15); and, moreover, the statutable offence is not affected by any right of entry the defendants, or either of them, may have; the offence being making the entry with a strong hand, or with a multitude of people. The offence at

Precedents. common law, on the other hand, is the breach of the public peace, and its character may be, it seems, affected by the numbers of persons and the title of the defendants: (see *Reg. v. Wilson*, 8 T. R. 357, 364.)

2. *Misdemeanors* It has been held that an indictment under the stat. 5 Rich. 2, must show a freehold estate in the prosecutor, or an estate within the terms of the 21 Jac. 1, c. 15, which has extended the benefits of the previous statutes as regards restitution to tenants for years, tenants by copy of court roll, and tenants by elegit, statute merchant, and statute staple (*Reg. v. Wammop*, Sayer's Rep. 142), although there is no restriction in the words of the 5 Rich. 2, and the restriction is the result of the language of subsequent statutes, relating merely to *restitution*, and not to the *punishment* by indictment.

It is to be observed, that the forcible detainer is no essential part of the offence if the forcible entry is proved. A forcible detainer is, however, indictable, although the entry may not have been forcible within the meaning of the statute.]

No. XCII.

Forcible Entry at Common Law.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., C. D., E. F., G. H.,
and J. K., on the day of , in the year of our Lord 1853,
unlawfully and injuriously and with a strong hand entered into a certain
mill, and certain lands and houses, and the sites of a certain mill and
certain houses, with the appurtenances, situate in the parish of , in
the county of Stafford, and then in the possession of one L. M., and
unlawfully and injuriously and with a strong hand, expelled and put out
the said L. M. from the possession of the said premises.

[See *Reg. v. Lewis*, 8 T. R. 357, and see the note to the last form. As it is sufficient to allege and prove possession in this indictment at common law, without further title, this is frequently preferable to an indictment under the statute. A count under the statute may be added however; and, if an assault was committed, a count should be added as in form No. IV., *ante*.]

No. XCIII.

Against a Parish for non-repair of a Highway.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that for a long time there hath
been and still is a certain common and ancient Queen's highway leading
from the village of , in the county of Stafford, to the town of ,
in the said county of Stafford, used by and for all persons with their
horses, carts and carriages to go, return, pass, repass and ride at their
free will and pleasure; and that a certain part of the said common and
ancient Queen's highway, situate, lying and being in the parish of ,
in the said county of Stafford, containing in length three hundred yards,
and in breadth nine yards, on the day of , in the year of our
Lord 1853, was, and continually from thence hitherto hath been and

still is, very ruinous, miry, broken and in great decay, for want of due reparation and amendment of the same, so that no persons during the time aforesaid could or now can go, return, pass, repass, ride and labour with their horses, coaches, carts and other carriages in, through and along the Queen's common highway aforesaid, as they ought and were wont and accustomed to do. And the jurors aforesaid, upon their oath aforesaid, do further present that the inhabitants of the said parish of _____, in the said county of Stafford, ought to repair and amend the said common highway so as aforesaid being ruinous and in decay, when and so often as it should or shall be necessary.

Precedents.

2. Misdemeanors

No. XCIV.

Against an Individual for not repairing a Horse and Footway, commonly called a Pack and Prime way.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that for a long time there hath
been and still is a certain common and ancient pack and prime way
leading from _____, in the county of Stafford, to _____, in the county
of Salop, used by and for all persons on foot and on horseback to go,
return, pass and repass at their free will and pleasure; and that a certain
part of the said common and ancient pack and prime way, situate, lying
and being in the parish of _____, in the said county of Stafford, con-
taining in length five hundred yards, and in breadth five yards, on
the _____ day of _____, in the year of our Lord 1853, was, and con-
tinually from thence hitherto hath been and still is, very ruinous, miry,
broken and in great decay for want of due reparation and amendment
of the same, so that no persons during the time aforesaid could or now
can go, return, pass and repass on foot or on horseback, in, through and
along the said pack and prime way as they ought and were wont and
accustomed to do. And the jurors aforesaid, upon their oath aforesaid,
do further present that A. B., by reason of his tenure of certain lands
and tenements called _____, lying and being in the said parish of _____,
ought to repair and amend that part of the said pack and prime way so
as aforesaid being ruinous and in decay.

No. XCV.

Nuisance in diverting a Watercourse.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the _____ day
of _____, in the year of our Lord 1853, and at divers other times,
unlawfully and injuriously did divert and turn out of its ancient and
accustomed channel and course, and cause and procure to be diverted, a

Precedents. certain ancient common watercourse and common stream of water situate in the parish of _____, in the county of Stafford, and did then make and place, and cause and procure to be made and placed, a dam and embankment across the said stream, and did then and thereby deprive the inhabitants of the said parish, and all other persons using the said stream of water and watercourse, of the said water; to the great damage and common nuisance of the said inhabitants and other persons.

§ *Misdemeanors*

No. XCVI.

Nuisance by rendering Water unfit to Drink.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., C. D., and E. F.,
on the _____ day of _____, in the year of our Lord 1853, and at
divers other times did unlawfully and injuriously convey, and cause and
suffer to be drained and conveyed, great quantities of noxious and offen-
sive liquid matters, scum, and refuse, produced from the making of gas
and of coal-tar and coke, from certain premises of the said A. B., C. D.,
and E. F., situate in the parish of _____, in the county of Stafford,
into a certain ancient stream of pure water, there situate and flowing,
and did thereby corrupt and render unwholesome the water of the said
stream, and make the same unfit to drink, to the great injury and common
nuisance of all persons residing near the said stream, and of all other
persons using the water thereof.

[See *Rez v. Medley*, 6 C. & P. 229.]

No. XCVII.

Nuisance by deleterious Smoke and Vapours.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the _____ day
of _____, in the year of our Lord 1853, and at divers other times,
unlawfully and injuriously did erect, and cause and procure to be erected,
in the parish of _____, in the county of Stafford, certain furnaces and
ovens for the burning of coke, and did then unlawfully and injuriously
cause and permit great quantities of smoke and of sulphureous and
other noxious, unwholesome, and injurious vapour to arise from the said
furnaces, and to impregnate the air near and around the said furnaces,
and to enter the dwelling-houses situated near the said furnaces, to the
great damage and common nuisance of all persons living and inhabiting
near the said furnaces, and of all other persons passing near the same.

[See *Rez v. Davey*, 5 Esp. 216.]

No. XCVIII.

Nuisance by carrying on a Trade offensive to the smell.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, and on divers other days
and times, unlawfully and injuriously did kill, and cause to be killed,
divers large numbers of horses, in the parish of , in the county of
Stafford, and near to the dwelling-houses of divers persons then in-
habiting the same houses, and also near to a certain public road and
highway ; and then and on the said other days and times unlawfully and
injuriously did cause and permit the skins, flesh, bones, blood, entrails,
excrements, and other filth of and from the said horses so killed as afore-
said, to lie and remain near to the said dwelling-houses, and near to the
said public road and highway for a long space of time, to wit, for the
space of one week, whereby divers noisome and unwholesome smells
did then arise from the said skins, flesh, bones, blood, entrails, excre-
ments, and other filth, so that the air was then greatly corrupted and
infected thereby, to the great damage and common nuisance of the in-
habitants of the said houses, and of all other persons passing upon and
along the said public road and highway.

No. XCIX.

Common nuisance in exposing a Glandered Horse in a public way.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully, knowingly, wil-
fully and injuriously did bring and cause to be brought a certain horse
into and along a certain public place, street, and highway, called ,
situate at , in the county of Stafford, and that the said horse, at
the time he was so brought as aforesaid, was then and there infected
with a contagious, infectious and dangerous disease called the glanders,
as he the said A. B. then well knew ; and that the said A. B. then kept
and continued and exposed the horse there for the space of one hour ;
and that during all that time there were divers liege subjects of our
said Lady the Queen, standing, passing and repassing with their horses
and cattle, in and along the said public place, street and highway, who
then and there became liable to be infected with the said contagious, in-
fectious and dangerous disease.

[This is a misdemeanor at common law.]

*Precedents.**2. Misdemeanors*

No. C.

For keeping a Disorderly House.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., and C., his wife,
on the day of , in the year of our Lord 1853, and on
divers other days and times subsequent thereto, unlawfully did keep and
maintain a certain common, ill-governed and disorderly house, at ,
in the parish of , in the county of Stafford, and for the lucre
and gain of him the said A. B., did then unlawfully and wilfully cause
and procure divers persons, as well men and women, of evil name and
fame, and of dishonest conversation, unlawfully to frequent and come
together there, as well by night as by day, and did then and there
permit them to be and remain drinking, tippling, whoring, and misbe-
having themselves, to the great damage and common nuisance of all
persons there inhabiting, living, residing and passing.

No. CL

Procuring the defilement of a Girl under twenty-one years of age.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, did unlawfully falsely pretend
and represent to one C. D., a girl under the age of twenty-one
years, to wit, of the age of eighteen years, that she the said A. B.
was acquainted with the parents of the said C. D., and that she
the said A. B. knew a lady in want of a servant, and that she the
said A. B. was employed by a lady to hire a servant; by means of
which false pretences and representations, the said A. B. did then
unlawfully procure the said C. D., then being under the age twenty-
one years as aforesaid, to have illicit carnal connexion with a certain
person to the jurors aforesaid unknown. Whereas in truth and in fact
the said A. B. was not then acquainted with the parents of the said
C. D.; and whereas in truth and in fact the said A. B. did not then
know a lady in want of a servant; and whereas in truth and in fact
the said A. B. was not then employed by any lady to hire a servant, as
she the said A. B. then well knew; against the form of the statute in
such case made and provided.

[See the statute 13 & 13 Vict. c. 76.]

No. CII.

Conspiracy to procure the defilement of a Girl.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B. and C. D., on
the day of , in the year of our Lord 1853, did between
themselves conspire, combine, confederate and agree together, wickedly,
knowingly and designedly to procure, by false pretences, false repre-
sentations, and other fraudulent means, one C. D., then being a girl
under the age of twenty-one years, to wit, of the age of fifteen years, to
have illicit carnal connexion with a man, to wit, with a certain man
whose name is to the jurors aforesaid unknown.

[This is a misdemeanor at common law: (see *Reg. v. Meare*, 2 Den. C. C. 79; 20 L. J., N. S., 59, M. C.)]

No. CIII.

Uttering counterfeit Coin.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, did tender, utter and put off
to one C. D., one piece of false and counterfeit coin, resembling and
apparently intending to resemble and pass for a certain piece of the
Queen's current silver coin, called a half-crown; he the said A. B., at
the time he so tendered and uttered the said piece of false and counter-
feit coin, well knowing the same to be false and counterfeit; against the
form of the statute in such case made and provided.

[With respect to this and the following forms, see the statute 2 Will. 4, c. 34, s. 7.]

No. CIV.

Uttering and having other base Coin in possession.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, did tender, utter and
put off to one C. D., one piece of false and counterfeit coin, resembling
and apparently intending to resemble and pass for a certain piece of the
Queen's current silver coin, called a shilling; he the said A. B., at the
time he so tendered and uttered the said piece of false and counterfeit
coin, well knowing the same to be false and counterfeit; and that the
said A. B. also, at the time of such tendering and uttering, had then
in his possession, besides the piece of false and counterfeit coin so ten-

Precedents
 2. *Misdemeanors* dered and uttered as aforesaid, one other piece of false and counterfeit coin resembling and apparently intended to resemble and pass for a certain piece of the Queen's current silver coin, called a shilling ; against the form of the statute in such case made and provided.

No. CV.

Uttering twice within ten days.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., on the day
 of , in the year of our Lord 1853, did tender, utter and put
 off to one C. D., one piece of false and counterfeit coin, resembling and
 apparently intending to resemble and pass for a certain piece of the
 Queen's current silver coin, called a florin ; he the said A. B., at the
 time he so tendered and uttered the said piece of false and counterfeit
 coin, well knowing the same to be false and counterfeit ; and that the
 said A. B. afterwards, and within ten days of his so tendering and utter-
 ing the said false and counterfeit coin aforesaid, to wit, on the
 day of , in the year aforesaid, did tender and utter to one E. F.
 one other piece of false and counterfeit coin resembling and apparently
 intended to resemble and pass for a certain piece of the Queen's current
 silver coin, called a florin ; he the said A. B., at the time he so ten-
 dered and uttered the said last-mentioned piece of false and counterfeit
 coin, well knowing the same to be false and counterfeit ; against the form
 of the statute in such case made and provided.

No. CVI.

Having base Coin with intent to utter.

STAFFORDSHIRE, } THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., on the day
 of , in the year of our Lord 1853, had in his custody and pos-
 session three pieces of false and counterfeit coin, resembling and appa-
 rently intending to resemble and pass for certain of the Queen's copper
 coin called pennies, with intent then to utter and put off the same ; he
 the said A. B. then well knowing the same to be false and counterfeit ;
 against the form of the statute in such case made and provided.

MISCELLANEOUS PRECEDENTS.

No. CVI.

Indictment for conspiracy to defraud intending Emigrants of their Passage Money by pretending to have an Interest in certain Ships.

CENTRAL Criminal Court, } THE jurors for our Lady the Queen
to wit. } upon their oath present, that C. J. T.,
late of the city of London, labourer, and H. G. M., late of the same place,
labourer, with force and arms, on the 26th day of June, in the year of
our Lord 1852, at the parish of , in the city of London, and
within the jurisdiction of the Central Criminal Court, together with
divers other evil-disposed persons, to the jurors aforesaid unknown, un-
lawfully, fraudulently and deceitfully did combine, conspire, confederate
and agree together to open a certain office, as and for the office of a
pretended company, called the "Australian Gold and General Mining
Company," and by falsely and fraudulently representing to J. J., J. G.,
and T. B., that the said company had chartered divers vessels, for the
purpose of conveying passengers to Port Philip, in Australia, and that
they the said C. J. T. and the said H. G. M., were authorized by the
said company to sell and dispose of berths to persons contracting to
become passengers on board the said vessels, to obtain of and from the
said J. J., J. G., and T. B., divers large sums of money of the moneys
of the said J. J., J. G., and T. B. respectively, and to cheat and defraud
them thereof.

And the jurors aforesaid, upon their oath aforesaid, do further present
that afterwards, to wit, on the day and year aforesaid, at London afore-
said, and within the jurisdiction of the said court, the said C. J. T. and
the said H. G. M., together with the other evil-disposed persons, to
the jurors aforesaid unknown, in pursuance of the said conspiracy, com-
bination and agreement so had by and amongst them as aforesaid, did
open a certain office in the said city of London, and did falsely and
fraudulently pretend and advertise that the said office was the office of a
certain company then and there established for the purpose of promoting
the emigration of Her Majesty's liege subjects to parts beyond the seas,
called the "Australian Gold and General Mining Company," to wit, at
London aforesaid, and within the jurisdiction of the said court.

And the jurors aforesaid, upon their oath aforesaid, do further present
that afterwards, to wit, on the same day and year aforesaid, at London
aforesaid, and within the jurisdiction of the said court, the said C. J. T.
and the said H. G. M., in pursuance of the said conspiracy, combination
and agreement so had and made between themselves and the other evil-
disposed persons aforesaid, did falsely pretend to the said J. J., J. G.,
and T. B., that divers vessels, and, amongst others, certain vessels called
respectively the "Camilla," the "Medicia," and the "Janet Mitchell,"
had been chartered by the said company to convey passengers from the
Port of London to Port Philip in Australia, and that they the said
C. J. T. and H. G. M., had full and legal power and authority to secure
and provide for the conveyance of the said J. J., J. G., and T. B. as

Precedents.
 No. CVL.
 Indictment for
 conspiracy to
 defraud
 emigrants of
 passage money.

passengers on board the said vessels, or some or one of them; by means of which said false pretences and of the premises in this count mentioned, and in pursuance of the conspiracy, combination and agreement aforesaid, they the said C. J. T. and H. G. M. did then and there unlawfully and fraudulently obtain of and from the said J. J. the sum of eleven pounds in money of the moneys of the said J. J., of the said J. G. the sum of nine pounds in money of the moneys of the said J. G., and of the said T. B. the sum of thirty pounds in money of the moneys of the said T. B., with intent then and there to cheat and defraud the said J. J., the said J. G., and the said T. B., of the said sums of money of the moneys of the said J. J., the said J. G., and the said T. B. respectively; to the great damage, injury and deception of the said J. J., the said J. G., and the said T. B., and against the peace of our said Lady the Queen, her crown and dignity.

Second count.

Second Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said C. J. T. and H. G. M. afterwards, to wit, on the day and year aforesaid, in the city aforesaid, and within the jurisdiction of the said court, together with divers other evil-disposed persons to the jurors aforesaid unknown, unlawfully, fraudulently and deceitfully did combine, conspire, confederate and agree together by divers false pretences and subtle means and devices to cause it to be believed, that a certain company was established at a certain office in the said city, to wit, for the purpose of promoting the emigration of Her Majesty's liege subjects to parts beyond the seas, and that they the said C. J. T. and H. G. M., were the agents of and for the said company, and that the said company had then chartered certain ships to sail from London to a place beyond the seas, to wit, Australia, and that they the said C. J. T. and H. G. M., then could, as such agents of and for the said company, contract for the carrying of passengers, and provide that passengers should be carried by the said ships, chartered by the said company, from London to Australia as aforesaid, and by means of the said belief to obtain from divers liege subjects of our Lady the Queen, to wit, J. J., J. G., and T. B., divers large sums of money of the moneys of the said J. J., of the moneys of the said J. G., and of the moneys of the said T. B., and to cheat and defraud the said J. J., J. G., and T. B., of their said moneys respectively; and in pursuance of the said last-mentioned conspiracy, they the said C. J. T. and H. G. M., did then and there open an office in the said city of London, and falsely pretend that it was the office of the said company, and they the said C. J. T. and H. G. M., at the said office, in pursuance of the said last-mentioned conspiracy, then and there falsely and deceitfully pretended that they were the agents of and for the said company, that the said company had then chartered certain ships to sail from London to a place beyond the seas, to wit, Australia, and that they the said C. J. T. and H. G. M., then could, as such agents of and for the said company, lawfully contract for the carrying of passengers, and provide that passengers should be carried by the said ships chartered by the said company from London to Australia as aforesaid; and the said C. J. T. and H. G. M., by means of the said false pretences and in further pursuance of the said last-mentioned conspiracy, did then and there unlawfully obtain from the said J. J. eleven pounds in money of the moneys of the said J. J., and from the said J. G. nine pounds in money of the moneys of the said J. G., and from the said T. B. thirty pounds in money of the moneys of the said T. B., with intent to cheat and defraud the said J. J., J. G., and T. B.

of their said moneys respectively ; to the great damage of the said J. J., J. G., and T. B. respectively, to the evil example of all others in like case offending, and against the peace of our said Lady the Queen, her crown and dignity.

Precedents.

No. CVI.

Indictment for conspiracy to defraud emigrants of passage money.
Third count.

Third Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said C. J. T. and H. G. M., on the day and year aforesaid, in the city aforesaid, and within the jurisdiction of the said court, together with divers other evil-disposed persons to the jurors aforesaid unknown, unlawfully, fraudulently and deceitfully did combine, conspire, confederate and agree together, by divers false pretences and subtle means and devices, to cause it to be believed that a certain company, called the “Australian Gold Mining and Emigration Company,” had an office in the said city of London for the transaction of its business, and that he the said C. J. T. was the agent of and for the said company; and that the said company had then chartered a certain ship, called the “Medicia,” to sail from London to a place beyond the seas, to wit, Australia, and that he the said C. J. T. then could, as such agent of and for the said company, contract for the carrying of passengers and provide that passengers should be carried by the said ship, called the “Medicia,” from London to Australia aforesaid, and by means of the said belief to obtain from one J. G. a large sum of money, to wit, nine pounds in money of the moneys of the said J. G., and to cheat and defraud him thereof; and, in pursuance of the said last-mentioned conspiracy, they the said C. J. T. and H. G. M., on the day and year aforesaid, at the city aforesaid, and within the jurisdiction of the said court, did open an office in the said city of London, and did falsely pretend that it was the office of the said “Australian Gold Mining and Emigration Company,” and that the said company had then chartered the said ship, called the “Medicia,” to sail from London to a place beyond the seas, to wit, Australia, and that he the said C. J. T. then could contract for the carrying of passengers, and provide that passengers should be carried by the said ship, called the “Medicia,” from London to Australia aforesaid; by means of which said false pretences and in further pursuance of the said last-mentioned conspiracy, they the said C. J. T. and the said H. G. M., did then and there unlawfully obtain from the said J. G. nine pounds in money of the moneys of the said J. G. with intent to cheat and defraud him thereof; to the great damage of the said J. G., to the evil example of all others in the like case offending, and against the peace of our said Lady the Queen, her crown and dignity.

Fourth Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said C. J. T. and the said H. G. M. afterwards, to wit, on the day and year aforesaid, in the city aforesaid, and within the jurisdiction of the said court, together with divers other evil-disposed persons to the jurors aforesaid unknown, unlawfully, fraudulently and deceitfully did combine, conspire, confederate and agree together, by divers false pretences and subtle means and devices, to cheat and defraud one J. G. of a large sum of money of the moneys of the said J. G., and that, in pursuance of the said last-mentioned conspiracy, they, the said C. J. T. and H. G. M., afterwards, to wit, on the day and year aforesaid, in the city aforesaid, and within the jurisdiction of the said court, did falsely pretend that a certain company, called the “Australian Gold Mining and Emigration Company,” had then chartered a certain ship, called the “Medicia,” to sail from London to a certain place beyond the seas, to wit, Port Philip in Australia, and that they the said C. J. T.

Fourth count.

Precedents.

No. CVI.
Indictment for
conspiracy to
defraud
emigrants of
passage money.

and H. G. M. then could, on behalf of the said company, provide that one H. H. should be carried as a passenger on board the said ship from London to Port Philip aforesaid ; by means of which said false pretences and in pursuance of the said last-mentioned conspiracy, they the said C. J. T. and H. G. M., did then and there unlawfully obtain from the said J. G. nine pounds in money of the moneys of the said J. G., with intent to cheat and defraud him thereof. Whereas in truth and in fact the said company had not then chartered the said ship, called the "Medicia," to sail from London to Port Philip aforesaid, nor could they the said C. J. T. and H. G. M., or either of them, then on behalf of the said company or in any other right, provide that the said H. H. should be carried as a passenger on board the said ship from London to Port Philip aforesaid to the great damage of the said J. G., to the evil example of all others in the like case offending, and against the peace of our said Lady the Queen, her crown and dignity.

Fifth count.

Fifth Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said C. J. T. and H. G. M., afterwards, to wit, on the day and year aforesaid, in the city aforesaid, and within the jurisdiction of the said court, together with divers other evil-disposed persons, to the jurors aforesaid unknown, unlawfully, fraudulently and deceitfully did combine, conspire, confederate and agree together, by divers false pretences and subtle means and devices, to cheat and defraud one J. G. of a large sum of money, of the moneys of the said J. G., and that, in pursuance of the said last-mentioned conspiracy, he the said C. J. T., afterwards, to wit, on the day and year aforesaid, in the city aforesaid, and which the jurisdiction of the said court, did falsely pretend to the said J. G. that a certain company, called the "Australian Gold Mining and Emigration Company," had then chartered a certain ship, called the "Medicia," to sail from London to a certain place beyond the seas, to wit, Port Philip, in Australia, and that he the said C. J. T. then could, on behalf of the said company, lawfully contract and agree that one H. H. should be carried as a passenger on board the said ship from London to Port Philip aforesaid ; by means of which said false pretences, and in pursuance of the said last-mentioned conspiracy, he the said C. J. T. and H. G. M., did then and there unlawfully obtain from the said J. G. nine pounds in money, of the moneys of the said J. G., with intent to cheat and defraud him thereof. Whereas in truth and in fact no company called the Australian Gold and General Mining Company had then chartered the said ship, called the "Medicia," to sail from London to Port Philip aforesaid, nor could he the said C. J. T. then, on behalf of the said company, or in any other right, contract or agree that the said H. H. should be carried as a passenger on board the said ship, from London to Port Philip aforesaid ; to the great damage of the said J. G., to the evil example of all others in the like case offending, and against the peace of our Lady the Queen, her crown and dignity.

Sixth count.

Sixth Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said C. J. T. and H. G. M., afterwards, to wit, on the same day and year aforesaid, in the city aforesaid, and within the jurisdiction of the said court, together with the said divers other evil-disposed persons, to the jurors aforesaid unknown, unlawfully, fraudulently, and deceitfully did conspire, combine, confederate and agree together, by divers false pretences and subtle means and devices, to obtain of and from one J. J. divers large sums of money, of the moneys of the said J. J., and to cheat and defraud him thereof, to the great

damage of the said J. J., to the evil example of all others in the like case offending, and against the peace of our Lady the Queen, her crown and dignity.

Precedents.

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No. CVII.

Indictment for Perjury committed by a Defendant in his answer to a Bill in Chancery.

CENTRAL Criminal Court, } THE jurors for our Lady the Queen
to wit. } upon their oath present, that heretofore, and before the commission of the offence hereinafter mentioned, to wit, on the 6th day of March, A.D. 1851, at the parish of St. Andrew, Holborn, in the county of Middlesex, and within the jurisdiction of the Central Criminal Court, a certain bill of complaint was exhibited and filed in the High Court of Chancery of our Lady the Queen, by A. W., the wife of W. W. W., by A. C., her next friend, and L. G. W. the younger, E. C. W., and A. J. W., and R. G. W., and S. W. W., who were severally infants under the age of twenty-one years, by the said A. C., their next friend, against J. B., J. G., J. G. K., E. C. L., and C. his wife, R. B. and E. his wife, R. M., J. Y., G. S., W. W. W., J. F. G., W. E. S. and L. his wife, and Her Majesty's Attorney-General, thereby showing, amongst other matters and things, that in and by a certain deed and indenture, dated the 26th day of January, A.D. 1839, it was expressed that one T. G. did thereby grant and confirm unto the said defendant J. B., and unto one R. J. M., their executors, administrators and assigns, an annuity or yearly rent-charge of 95*l.* sterling, and did thereby charge the same upon certain leasehold messuages and premises in Suffolk-street and the Haymarket, and it was thereby declared that the said trustees should stand possessed of the said rent-charge in trust as to 85*l.*, part thereof, to pay the same to the treasurer of Enon Chapel, upon certain charitable trusts therein mentioned, being trusts for the benefit of the said chapel, situate and being in New Church-street, in the county aforesaid, and the minister and the congregation thereof; and as to the sum of 10*l.*, the residue of the said rent-charge, in trust for the poor of the congregation of the said chapel, to be distributed annually at the discretion of the said defendant J. B., and the said R. J. M., or the survivor of them, or the executors or administrators of such survivor, and of the minister of the said chapel for the time being; and showing further that the said deed, though purporting to operate or take effect immediately from the making thereof, without any reservation, trust, provision or agreement for the benefit of the said T. G., was nevertheless not intended to take effect in possession, or to be acted upon and enforced against the said T. G., for the charitable uses therein mentioned, immediately from the making thereof, but that, on the contrary, it was agreed or understood by or on the part of the said defendant, J. B., who procured the said T. G. to make the said deed, or on

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the part of the said defendant, J. B., and his said co-trustee, or on the part of the said T. G., with their privy and assent, that the said rent-charge should not be called for, or payment thereof required from the said T. G., from the time of making the said deed, according to the terms of the said deed, but that during his life only such payments should be made in respect of the said deed, or on account of the said rent-charge, or in pursuance of the said grant, as the said T. G. should desire or wish, or think fit to make; and showing further that, under the circumstances, the said grant of the said rent-charge was or ought to be held to have been made with a reservation, trust, condition, limitation clause or agreement for the benefit of the donor or grantor, the said T. G.; and that the same was not in fact made to take effect in possession for the said charitable uses therein mentioned, immediately from the making thereof, but that the same, in respect of its being so made, was altogether contrary to the true intent and meaning of the statutes passed to restrain the disposition of lands, whereby the same became inalienable, and was altogether void in law; whereupon the said plaintiffs, by their said bill of complaint, by their said next friend, did pray (amongst other things) that the said J. B. might, upon his corporal oath, and according to the best and utmost of his knowledge, remembrance, information and belief, full, true, direct and perfect answer make to the several interrogatories in the said bill of complaint set forth, to which he was thereby required to make answer, and particularly to the interrogatories hereinafter set forth; and did further pray that the said deed and indenture might be declared void and of none effect, and might be ordered to be delivered up to be cancelled, as in and by the said bill of complaint, filed as of record in the said Court of Chancery (amongst other things), more fully appears. And the jurors aforesaid, upon their oath aforesaid, do further present that afterwards, to wit, on the 6th day of May, A.D. 1851, at the parish aforesaid, in the county aforesaid, and within the jurisdiction of the said Central Criminal Court, it became material and necessary in the said cause, between the said parties, for the said J. B. to swear and set forth in his answer to the said bill of complaint, whether or not it was the fact that the said deed, though purporting to operate or take effect immediately from the making thereof, without any reservation, trust, provision or agreement for the benefit of the said T. G., was nevertheless not intended to take effect in possession, or, whether or not, to be acted upon and enforced against the said T. G., for the charitable uses therein mentioned, immediately from the making thereof, or when it was intended to take effect and be acted upon and enforced against the said T. G. for the said charitable uses, or how otherwise; and whether it was not agreed, or whether or not understood, and whether or not by or on the part of the said J. B., or whether or not on the part of the said J. B. and his said co-trustee, or whether or not on the part of the said T. G., with their privy and assent, or how otherwise, that the said rent-charge or yearly sum, or some and what part thereof, should not be called for, or payment thereof, or of some and what part thereof, required from the said T. G. from the time of making the said deed, according to the terms of the said deed, or whether or not it was understood or agreed to, some such or the like, or some other and what effect, or how otherwise; and whether it was not understood, and whether and between some persons and whom, that during the said T. G.'s life or some other, and what period only such payments should be made in respect of the said deed, or on account of the said rent-charge, or in pursuance of the said

grant, as the said T. G. should desire or wish or think fit to make, or how otherwise; and whether it was not the fact that there was, at the time of or very shortly before or after the making of the said deed, or at some other and what time some and what reservation, or some and what trust, or some and what limitation, or some and what provision, or some and what condition, or some and what clause, or some and what agreement, and whether or not which was in fact afterwards acted upon by the said T. G. and the said J. B., or how otherwise, and whether or not for the benefit of the said T. G., or whether or not in or for his exoneration and discharge, in respect of or concerning or relating to the annual sum of 95*l.*, by the said deed purported to be granted to the said J. B. and the said R. J. M., or some other and what annual sum or grant, or how otherwise; and whether or not did the said deed, as respects such or any or some other and what reservation, trust, limitation, provision, condition, clause or agreement, express the whole of the arrangement or agreement between the said T. G. and the said J. B., or the whole of the said T. G.'s intention in relation to the time when the said grant should take effect or be acted upon, or the said rent-charge be first paid to or levied or received by the trustees named in the said deed, or how otherwise; and whether it was not agreed, or whether or not understood, that the said grant should not be acted upon immediately, or take effect forthwith from the making thereof as against the said T. G., or to some such or the like effect; and whether it was not agreed or understood that the said rent-charge, or some and what part thereof, should not be immediately required from the said T. G., or be enforceable against him forthwith, or to some such or the like effect, or how otherwise.

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And the jurors aforesaid, upon their oath aforesaid, do further present that the said J. B., one of the defendants named in the said bill of complaint, afterwards, to wit, on the day and year last mentioned, at the parish aforesaid, in the county aforesaid, and within the jurisdiction of the said Central Criminal Court, came, in his own proper person, before F. B., Esquire, then being one of the Record and Writ Clerks of the said Court of Chancery, and then and there, before the said F. B., Esquire, exhibited and produced the answer in writing of him, the said J. B., to the aforesaid bill of complaint, intituled the answer of J. B., one of the defendants to the bill of complaint of A. W., the wife of W. W. W., by A. C., her next friend, and L. G. and A. M. W., the younger, E. C. W., A. J. W., and R. G. W. and S. W. W. severally, infants under the age of twenty-one years, by the said A. C., their next friend; and that the said J. B. then and there, in due form of law, was sworn, and did take his corporal oath upon the Holy Gospel of God, concerning the truth of the matters contained in the said answer, before the said F. B., Esquire, then being one of the said Record and Writ Clerks of the said Court of Chancery, and then and there having sufficient and competent power and authority to administer an oath to the said J. B. in that behalf, and that the said J. B., being so sworn as aforesaid, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and minding and intending unjustly to aggrieve the said plaintiffs, did then and there, upon his corporal oath, concerning the matters contained in the said answer, before the said F. B., Esquire, then as aforesaid being one of the said Record and Writ Clerks of the said Court of Chancery, and having such sufficient and competent authority as aforesaid, unlawfully, falsely, corruptly, knowingly, wilfully, and maliciously, by his own act and consent, answer, swear, and affirm,

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in writing (amongst other things), in substance, and to the effect following,—that so far as he the said J. B. knew or had any reason to believe, it was not the fact that the said deed, though purporting to operate and take effect immediately from the making thereof, without any reservation, trust, provision, or agreement, for the benefit of the said T. G., was nevertheless not intended to take effect, or to be acted upon or enforced against the said T. G. for the charitable uses therein mentioned, immediately from the making thereof, but that it was, according to the best of his the said J. B.'s knowledge and belief, intended to take effect and be acted on against the said T. G. for the said charitable uses immediately from the making thereof, and that it was not agreed or understood, by or on behalf of him the said J. B., or on the part of him and his said co-trustee, or on the part of the said T. G., with their privity or assent, or otherwise, that the said rent-charge or yearly sum, or any part thereof, should not be called for, or payment thereof, or of any part thereof, required from the said T. G. from the time of making the said deed, according to the terms of the said deed ; and that it was not understood or agreed to any such or the like or any other effect, and that it was not the fact that there was at the time of, or very shortly before or after, the making of the said deed, or at any other time, any reservation, or trust, or limitation, or provision, or condition, or clause, or agreement, or which was, in fact, afterwards acted upon by the said T. G. and the said J. B., for the benefit of the said T. G., or in or for his exoneration and discharge in respect of or concerning or relating to the annual sum of 95*l.*, by the said deed purported to be granted to the said J. B. and the said R. J. M., or any other annual sum or grant, or otherwise ; and that the said deed did express the whole of the arrangement or agreement between the said T. G. and the said J. B., and the whole of the said T. G.'s intention in relation to the time when the said grant should take effect or be acted upon, and the said rent-charge be first paid to, or levied or received by the trustees named in the said deed ; and that it was not agreed or understood that the grant should not be acted upon immediately, or take effect forthwith from the making thereof, as against the said T. G., or to any such or the like effect ; and that it was not agreed or understood that the said rent-charge, or any part thereof, should not be immediately required from the said T. G., or be enforceable against him forthwith, or to any such or the like effect. Whereas in truth and in fact the said deed, though purporting to operate and take effect immediately from the making thereof, without any reservation, trust, provision or agreement for the benefit of the said T. G., was nevertheless, as he the said J. B., at the time he so took the oath aforesaid well knew, not intended to take effect, or to be acted upon or enforced against the said T. G., for the charitable uses therein mentioned, immediately from the making thereof ; and whereas in truth and in fact as he the said J. B., at the time he so took the oath aforesaid well knew, it was agreed and understood by and on the behalf of him the said J. B., that the said rent-charge or yearly sum, or some part thereof should not be called for, or payment thereof or of some part thereof required from the said T. G. from the time of making the said deed, according to the terms of the said deed, and that it was understood and agreed to some such or the like effect ; and whereas in truth and in fact there was, as he the said J. B., at the time he so took the oath aforesaid, well knew, at the time of or very shortly before or after the making of the said deed, or at some other

time, some reservation, or trust, or limitation, or provision, or condition, or clause, or agreement, and which was, in fact, afterwards acted upon by the said T. G. and the said J. B., for the benefit of the said T. G., and in and for his exoneration and discharge, in respect of and concerning and relating to the annual sum of 95*l*., by the said deed purported to be granted to the said J. B. and the said R. J. M., or some other annual sum or grant, or otherwise; and whereas in truth and in fact the said deed, as he the said J. B., at the time he so took the oath aforesaid, well knew, did not express the whole of the arrangement or agreement between the said T. G. and the said J. B., and the whole of the said T. G.'s intention in relation to the time when the said grant should take effect or be acted upon, and the said rent-charge be first paid to, or levied, or received by the trustees named in the said deed, and that it was agreed and understood that the grant should not be acted upon immediately, or take effect forthwith, from the making thereof, as against the said T. G., and to some such or the like effect.

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And so the jurors aforesaid, upon their oath aforesaid, do say that the said J. B., on the day and year last aforesaid, at the parish aforesaid, in the county aforesaid, and within the jurisdiction of the said Central Criminal Court, in his answer aforesaid, upon his oath aforesaid, before the said F. B., Esquire, as such Record and Writ Clerk of the said Court of Chancery as aforesaid, and then and there having such sufficient and competent power and authority to administer the said oath to the said J. B. in that behalf as aforesaid, of his own will and consent, and of his own most wicked and corrupt mind, in manner and form aforesaid, unlawfully, falsely, knowingly, corruptly, wilfully, and maliciously did give false evidence and commit wilful and corrupt perjury, to the great displeasure of Almighty God, to the evil and pernicious example of all others in the like case offending, against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

No. CVIII.

*Indictment against a Bankrupt for not surrendering under the 12 & 13 Vict.
c. 106, s. 251.*

CENTRAL Criminal Court, } THE jurors for our Lady the Queen
to wit. } upon their oath present, that heretofore and after the making, passing and coming into operation of the Bankrupt Law Consolidation Act, A. D. 1849, and before and at the time of the commission of the offence hereinafter mentioned, R. C., late of the town and county of the town of Southampton, watchmaker, was a trader within the meaning of the laws then in force relating to bankrupts, and liable to become bankrupt, and for six calendar months next immediately preceding the time of the filing of the petition hereinafter mentioned had resided and carried on business within the London district of the Court of Bankruptcy, to wit, at Southampton aforesaid; and that the said R. C. being such trader as aforesaid, and so liable as aforesaid, heretofore and before the commission of the offence hereinafter mentioned, to wit, on the 12th day of June, in the year of our Lord 1852, was justly and truly indebted to C. S. and another, his partner in trade, in the sum of 50*l.* and upwards, to wit, the sum of 149*l.* 9*s.*, being the price and value of certain goods sold and delivered by them to the said R. C. at his request, and being so indebted and such trader as aforesaid, to wit, on the day and year aforesaid, did commit an act of bankruptcy. And the jurors aforesaid, upon their oath aforesaid, do further present that thereupon and afterwards, to wit, on the 16th day of June, in the year of our Lord 1852, the said C. S. and another, then being such creditors as aforesaid, did present their petition to the Court of Bankruptcy for the London district, according to the form specified in Schedule M. annexed to the said act, and in and by their said petition, did show unto the said Court of Bankruptcy, that the said R. C., being such trader as aforesaid, and having carried on business for six calendar months next preceding the date of the said petition, within the district of the said Court of Bankruptcy, that is to say, at the town of Southampton aforesaid, was indebted to them in the sum of 50*l.*, and that they had been informed and believed that the said R. C. had then lately committed an act of bankruptcy within the true intent and meaning of the law of bankruptcy, and did therefore pray that, upon proof of the requisites in that behalf, adjudication of bankruptcy might be made against the said R. C.; and the said C. S. then and there, to wit, on the day and year last aforesaid, in the said Court of Bankruptcy, did duly verify the truth of the said petition in the form specified in Schedule N., to the said act annexed, as in and by the said petition and the said verification thereof, filed in the office of the Chief Registrar of the said Court of Bankruptcy, reference being thereunto had, will more fully and at large appear; and the jurors aforesaid, upon their oath aforesaid, do further present that thereupon and afterwards, and before the commission of the offence hereinafter mentioned, to wit, on the day and year aforesaid, the said Court of Bankruptcy did, under the said petition, proceed to receive proof of the said debt and of the said trading of the said R. C., and of his said act of bankruptcy, and then, to wit, on the day and year

last aforesaid, upon proof thereof made to the said Court of Bankruptcy in that behalf, did adjudge the said R. C. to be bankrupt; a duplicate of which said adjudication afterwards and before the commission of the offence hereinafter mentioned, to wit, on the 7th day of June, in the year of our Lord 1852, and before notice of such adjudication was given in the *London Gazette* as hereinafter mentioned, was served upon the said R. C. by leaving the same at the usual and last-known place of abode and place of business of the said R. C., to wit, at Southampton aforesaid; and the jurors aforesaid, upon their oath aforesaid, do further present that afterwards, and after the expiration of seven days from the said adjudication, and the said service of the said duplicate, to wit, on the 25th day of June, in the year of our Lord 1852, no cause having been shown in the meantime to the satisfaction of the said Court of Bankruptcy for the annulling of the said adjudication, the said Court of Bankruptcy did cause notice and advertisement of the said filing of the said petition and of the said adjudication to be, and the same was, given in the *London Gazette*, and the said Court of Bankruptcy did, by the said notice and advertisement, appoint two public sittings of the said Court of Bankruptcy, for the said R. C. to surrender and conform, according to law, the first of which said sittings was thereby then and there appointed for the 2nd day of July then next, at one o'clock in the afternoon precisely, and the second of which said sittings was thereby appointed for the 6th day of August then next, at eleven o'clock in the forenoon precisely, which said last-mentioned day was a day not less than thirty days and not exceeding sixty days from the said notice and advertisement in the *London Gazette* as aforesaid, and was the day limited for the surrender of the said R. C., to wit, under the said petition; and the jurors aforesaid, upon their oath aforesaid, do further present that afterwards and after such notice and advertisement had been given in the *London Gazette* as aforesaid, to wit, on the 26th day of June, in the year of our Lord 1852, notice in writing of the said R. C. having been so adjudged and declared bankrupt as aforesaid, and of the said sittings and of the said day and hour limited for such surrender as aforesaid, was left at the usual and last-known place of abode and business of the said R. C., he not then being in prison, to wit, in High-street, Southampton, aforesaid, by which said last-mentioned notice the said R. C. was required personally to be and appear before Robert George Cecil Fane, Esq., then being a Commissioner of the said Court of Bankruptcy, and acting in the prosecution of the said petition at the Court of Bankruptcy aforesaid; in Basinghall Street, in the city of London, and within the jurisdiction of the said Central Criminal Court, on the said 2nd day of July, at one o'clock in the afternoon precisely, and on the 6th August then following at eleven o'clock in the forenoon precisely, and was thereby given to be informed that the said last-named day was the day limited for his surrender under the said petition, and that he the said R. C. was then and there to be examined and to make a full and true disclosure of all his estate and effects, according to the direction of the statute made and then in force concerning bankrupts; and the jurors aforesaid, upon their oath aforesaid, do further present that afterwards, that is to say, on the said 6th day of August, A.D. 1852, at the said Court of Bankruptcy, to wit, in Basinghall-street, aforesaid, in the parish of St. Michael Bassishaw, in London, and within the jurisdiction of the said Central Criminal Court, the said Robert George Cecil Fane then being such Commissioner as aforesaid, and acting in the prosecution of the said petition, did duly hold the said

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sitting so appointed to be holden on the said last-mentioned day as aforesaid, that is to say, at the hour of eleven in the forenoon of the said 6th day of August, A.D. 1852, and from the said hour of eleven continually, and until and long after the hour of three in the afternoon of the said day; and the jurors aforesaid, upon their oath aforesaid, do further present, that although the said Robert George Cecil Fane, as such Commissioner as aforesaid, and so acting as aforesaid, did, on the said 6th day of August, in the year aforesaid, at the said parish of St. Michael Bassishaw, in London, and within the jurisdiction of the said Central Criminal Court, duly hold the said sitting pursuant to the said notice in that behalf, nevertheless the said R. C., not regarding his duty in that behalf, did not, on the said day so limited for the said surrender and before three o'clock of the said day, nor at any period thereof whatever, surrender himself to the said Court of Bankruptcy, but then and there, on the said 6th day of August, A.D. 1852, at the parish aforesaid, in London aforesaid, and within the jurisdiction of the said Central Criminal Court, feloniously, wilfully and contemptuously, and having no lawful impediment whatever, and after and notwithstanding that the said notice in that behalf mentioned had been so left at the usual and last-known place of abode of the said R. C., and after and notwithstanding that the said notice was so given in the *London Gazette* as aforesaid, did therein make default, and then and there during all the day so limited for the said surrender and from thence hitherto, feloniously, wilfully and contemptuously did fail and altogether omit to surrender himself to the said Court of Bankruptcy, nor hath the said R. C. ever surrendered himself to the said Court of Bankruptcy under the said petition, with intent, by means of the felonious omission aforesaid, to defraud the creditors of the said R. C.; and the jurors aforesaid, upon their oath aforesaid, do say that the said R. C. hath not had any lawful impediment to his said surrender, nor any such lawful impediment proved to the satisfaction of the said Court of Bankruptcy at any time whatever, or any lawful impediment ever allowed by the said Court by any memorandum thereof made on any of the proceedings; to the great hindrance and perversion of public justice, in contempt of our said Lady the Queen and her laws, against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

Second Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that heretofore, and after the making, passing, and coming into operation of the said act of Parliament in the first count of this indictment mentioned, the said R. C., being a trader within the meaning of the laws in force relating to bankrupts, and liable to become bankrupt, was indebted to C. S. and another his partner in trade, in the sum of 50*l.* and upwards, to wit, the sum of 149*l.* 9*s.*, being the price and value of certain goods sold by the said C. S. and another to the said R. C., at his request, and that the said R. C., being so indebted and such trader, and liable to become bankrupt as in this count mentioned, afterwards, and before the commission of the offence hereinafter next mentioned, did commit an act of bankruptcy; and the jurors aforesaid, upon their oath aforesaid, do further present that thereupon and afterwards, to wit, on the 16th day of June, in the year of our Lord 1852, the said C. S. and another, then being such creditors as aforesaid, did present their petition to the Court of Bankruptcy for the London district, within which district the said R. C. had resided and carried on business for six calendar months next immediately preceding, the said petition being

in such form, and verified in such manner, as required by the statute in such case made and provided; and the said C. S. and another, in and by their said petition, did pray that, upon proof of the requisites in that behalf, adjudication of bankruptcy might be made against the said R. C.; and the jurors aforesaid, upon their oath aforesaid, do further present that such proceedings were thereupon had and taken in the matter of the said petition, that afterwards, to wit, on the said 16th day of June, in the year of our Lord 1852, the said R. C. was, by the said Court of Bankruptcy, duly declared and adjudged bankrupt, and a certain day, that is to say, the 6th day of August then next ensuing, was the day thereupon limited by the said Court of Bankruptcy for the surrender of the said R. C., according to the form of the statute in such case made and provided; and the jurors aforesaid, upon their oath aforesaid, do further present that, after the said R. C. had been adjudged bankrupt, as in this count mentioned, and before the commission of the offence hereinafter mentioned, notice of the said R. C. having been so adjudged bankrupt, and of the said day limited for his said surrender, was left at his usual and last known place of abode and business, to wit, in High-street, Southampton, aforesaid, he not then being in prison, and notice was also given in the *London Gazette* of the filing of the said petition, and of the sittings of the said Court of Bankruptcy, to wit, two intended sittings in the matter of the same petition, one to be holden on the 2nd day of July then next ensuing, and the other thereof on the said 6th day of August; and the jurors aforesaid, upon their oath aforesaid, do further present that the said R. C., having been so adjudged bankrupt, as in this count mentioned, and not regarding his duty in that behalf, did not, on the said day limited for his said surrender, and before three of the clock of the said day, surrender himself to the said Court of Bankruptcy, as he could and might and ought to have done, that is to say, at the parish of Saint Michael Bassishaw, in London, and within the jurisdiction of the said Central Criminal Court, but then and there, on the said 6th day of August, A.D. 1852, at the parish last aforesaid, in London aforesaid, and within the jurisdiction of the said Central Criminal Court, feloniously, wilfully and contemptuously, and having no lawful impediment whatever, and after and notwithstanding that the said notice in that behalf mentioned had been left at the usual and last known place of abode of the said R. C., and that the said notice was so given in the *London Gazette* as aforesaid, did therein make default, and then and there, and during all the said day so limited for the said surrender of the said R. C., and from thence hitherto, feloniously, wilfully and contemptuously did fail and altogether omit to surrender himself to the said Court of Bankruptcy, nor hath he hitherto ever surrendered to the said Court, with intent, by means of the said felonious omission, to defraud the creditors of the said R. C., to the great hindrance and perversion of public justice, in contempt of our said Lady the Queen and her laws, against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

Third Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that heretofore, and before and at the time of the commission of the offence hereinafter next mentioned, the said R. C. had been and was adjudged a bankrupt, and that the 6th day of August, A.D. 1852, was the day limited for his surrender to the Court of Bankruptcy, to wit, the Court of Bankruptcy for the London district in Basinghall-street, in London, and within the jurisdiction of the said

Precedents.

No. CVIII.
Indictment
against bank-
rupt for not
surrendering.

Precedents.
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 No. CVIII.
 Indictment
 against bank-
 rupt for not
 surrendering.

Central Criminal Court, according to the form of the statute in such case made and provided; and the jurors aforesaid, upon their oath aforesaid, do further present that, after notice thereof in writing had been left at the usual and last known place of abode of the said R. C., he not then being in prison, and after notice given in the *London Gazette* of the filing of the petition for adjudication of bankruptcy against him, to wit, the said adjudication under which he the said R. C. had been so adjudged bankrupt, and of the sittings of the court, to wit, the said Court of Bankruptcy, he, the said R. C., not regarding his duty in that behalf, feloniously, wilfully and without any lawful impediment whatever, did fail and omit to surrender himself, and did not surrender himself to the said Court of Bankruptcy upon the said day limited for his said surrender, and before three o'clock of the said day; and then and there, to wit, on the said last-mentioned day, at the parish aforesaid, in London aforesaid, and within the jurisdiction of the said Central Criminal Court, feloniously, wilfully and contemptuously, and without any lawful cause or impediment whatever, did therein make default, nor hath the said R. C. ever yet so surrendered himself, to the great hindrance and perversion of public justice, in contempt of our said Lady the Queen and her laws, against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

No. CIX.

Indictment for obtaining Goods by false pretences, the pretence being that the Defendant was bonâ fide carrying on a Business in a particular shop, and that he required Goods in the regular course of such Business; whereas, in fact, the shop was taken with no other object than fraudulently to obtain credit.

CENTRAL Criminal Court, } THE jurors for our Lady the Queen upon
 to wit. } their oath present, that heretofore, and
 before and at the time of the commission of the offence hereinafter next
 mentioned, W. J., hereinafter mentioned, had opened a certain shop as and
 for the purpose of there carrying on the business of a baker, to wit, at a
 certain house in a certain street called Southampton-street, in the parish
 of St. Giles, Camberwell, in the county of Surrey, and the said W. J.,
 late of the parish of Paddington, in the county of Middlesex, labourer,
 and H. K., late of the same place, labourer, being evil-disposed persons,
 and intending to cheat and defraud W. P., on the 6th day of August,
 in the year of our Lord 1852, at the parish last aforesaid, in the
 county of Middlesex aforesaid, and within the jurisdiction of the said
 Central Criminal Court, did require the said W. P. to supply to the said
 W. J., on credit, ten sacks of flour, and did then and there unlawfully,
 knowingly and designedly, falsely pretend to the said W. P., that he the
 said W. J. was then really and in truth carrying on the business of a
 baker at the said shop, and that the said W. J. then required the said

flour for the purposes of the said business; by means of which said false pretences, they the said W. J. and H. K. did then and there unlawfully, knowingly and designedly, fraudulently obtain of and from the said W. P. ten sacks of flour, of the value of 16*l.*, of the goods and chattels of the said W. P., with intent to cheat and defraud him of the same; and whereas, in truth and in fact, the said W. S. was not then really and in truth carrying on the business of a baker at the said shop, nor did the said W. J. require the said flour, or any flour whatever for the purposes of the said alleged business, as the said W. J. and H. K. so falsely pretended as aforesaid; and whereas the fact really was and is, that the said W. J. was then colourably, and not in reality, carrying on the said business at the said shop, and was so colourably carrying on the said business, and so pretending to require the said flour as aforesaid for the purposes of fraud and deceit, and for no lawful or honest purpose whatever; against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

Precedents.

No. CIX.
Indictment for
obtaining goods
by false
pretences.

Second count.

Second Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said W. J. and H. K., being such evil-disposed persons as aforesaid, and fraudulently devising and intending as aforesaid, afterwards, to wit, on the said 6th day of August, in the year of our Lord 1852, at the parish aforesaid, in the county aforesaid, and within the jurisdiction of the said Central Criminal Court, did request the said W. P. to supply to the said W. J. ten sacks of flour and ten quarters of oats, upon credit; and the said W. J. and H. K. did then and there unlawfully, knowingly and designedly, falsely pretend to the said W. P. that he the said W. J. then was a person of credit and responsibility, and then was a baker carrying on his business at Southampton-street, in the parish of St. Giles, Camberwell, in the county of Surrey, by means of which said false pretences, they the said W. J. and H. K. did then and there unlawfully, knowingly and designedly, fraudulently obtain of and from the said W. P. ten sacks of flour of the value of 16*l.*, and ten quarters of oats of the value of 9*l.*, of the goods and chattels of the said W. P., with intent to cheat and defraud him of the same; whereas in truth and in fact, the said W. J. was not then a person of credit and responsibility, nor was he a baker then carrying on his business at No. 10, Southampton-street aforesaid, or elsewhere, as the said W. J. and H. K. so falsely pretended as aforesaid; against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

Third count.

Third Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that heretofore, and before and at the time of the commission of the offence hereinafter next mentioned, the said W. J. had opened a certain shop as for the purpose of there carrying on the trade and business of a baker, to wit, at Southampton-street aforesaid; and that the said W. J. and H. K., being evil-disposed persons, and devising and intending as aforesaid, afterwards, to wit, on the 26th day of August, in the year of our Lord 1852, at the parish of Paddington aforesaid, in the county of Middlesex aforesaid, and within the jurisdiction of the said Central Criminal Court, did request the said W. P. to supply to the said W. J., on credit, fifty quarters of oats; and the said W. J. and H. K., did then and there unlawfully, knowingly and designedly, falsely pretend to the said W. P., that he the said W. J. was then really and in truth carrying on business at the said shop, and was

Fourth count.

Precedents.
 —
 No. CIX.
 Indictment for
 obtaining goods
 by false
 pretences.

then a person of credit and responsibility, and to whom credit might be safely given for the said oats; by means of which said false pretences, they the said W. J. and H. K. did then and there unlawfully, knowingly and designedly, fraudulently obtain of and from the said W. P. fifty quarters of oats of the value of 50*l.*, of the goods and chattels of the said W. P., with intent to cheat and defraud him of the same: whereas, in truth and in fact, the said W. J. was not then really and in truth carrying on any business at the said shop or elsewhere. And whereas the truth really was and is, that the said W. J. was colourably and not in reality carrying on such alleged business as aforesaid for the purposes of fraud and deceit, and for no honest purpose whatever. And whereas, in truth and in fact, the said W. J. was not a person of credit and responsibility, nor to whom credit might be safely given for the said oats, as the said W. J. and H. K. so falsely pretended as aforesaid; against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

Fourth Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said W. J. and H. K., being evil-disposed persons, heretofore, to wit, on the 1st day of September, in the year of our Lord 1852, at the parish of Paddington aforesaid, in the county of Middlesex aforesaid, and within the jurisdiction of the said Central Criminal Court, unlawfully and wickedly did conspire, combine, confederate and agree together, and with divers evil-disposed persons, by divers false pretences and by divers unlawful and fraudulent devices, arts, means, stratagems and contrivances, to acquire and get into their hands and possession, of and from the said W. P., divers large quantities of flour, corn, and other matters and things of great value, of and belonging to the said W. P., and to cheat and defraud him of the same; against the peace of our said Lady the Queen, her crown and dignity.

FORMS OF INDICTMENTS
FOR
OFFENCES TRIABLE AT THE ASSIZES ONLY,¹
ADAPTED TO THE PROVISIONS OF
THE CRIMINAL LAW AMENDMENT ACT,
14 & 15 VICT. CAP. 100,
AND ALPHABETICALLY ARRANGED.

By HENRY T. J. MACNAMARA, ESQ., OF LINCOLN'S INN,
BARRISTER-AT-LAW.

I.—ABDUCTION.

No. 1.

Of a Woman, on account of her Fortune. (9 Geo. 4, c. 31, s. 19.)

MIDDLESEX, } THE jurors for our Lady the Queen upon their
to wit,² } oath present, that A. B., on the day
of , in the year of our Lord, 1853, feloniously and from motives of

¹ The offences triable at the assizes only, and not at quarter sessions, are treason, murder, capital felony, felony, which when committed by a person not previously convicted of felony, is punishable by transportation for life; and the following offences:—1. Misprision of treason. 2. Offences against the Queen's title, prerogative, person, or Government, or against either House of Parliament. 3. Offences subject to the penalty of *præsumptio*. 4. Blasphemy, and offences against religion. 5. Administering and taking unlawful oaths. 6. Perjury and subornation of perjury. 7. Making or suborning any other person to make a false oath, affirmation, or declaration, punishable as perjury or as a misdemeanor. 8. Forgery. 9. Unlawfully and maliciously setting fire to crops of corn, grain, or pulse, or to any part of a wood, coppice or plantation of trees, or to any heath, gorse, furze, or fern. 10. Bigamy, and offences against the laws relating to marriage. 11. Abduction of women and girls. 12. Endeavouring to conceal the birth of a child. 13. Offences against any provision of the laws relating to bankrupts and insolvents. 14. Composing, printing, or publishing blasphemous, seditious, or defamatory libels. 15. Bribery. 16. Unlawful combination and conspiracies, except conspiracies and combinations to commit any offence which when committed by one person, may be tried at the quarter sessions. 17. Stealing, or fraudulently taking or injuring or destroying records or documents belonging to any court of law or equity, or relating to any proceeding therein. 18. Stealing, or fraudulently destroying or concealing wills or testamentary papers, or any document or written instrument being or containing evidence of the title to any real estate, or any interest in lands, tenements, or hereditaments: (5 & 6 Vict. c. 38.) Offences under 9 & 10 Vict. c. 25, for preventing malicious injuries to person and property by fire or by explosive or destructive substances: (see sect. 15.)

² The venue in the margin is sufficient without stating any venue in the body of the indictment, except where local description is necessary (14 & 15 Vict. c. 100, s. 23), and no indictment shall be held insufficient for want of a proper or perfect venue: (*id.* s. 24.) If the offence be committed within a city which is also a county of itself, state "City of — and

Precedents. lucre did take away ("take away or detain") a certain woman named C. D. against her will, with intent to marry her ("marry or defile, or to cause to be married or defiled by any other person,"), she the said C. D., at the time when she was so taken away having a certain present and absolute legal interest in certain real estate ("any interest, whether legal or equitable, present or future, absolute, conditional, or contingent in any real or personal estate," or being "an heiress presumptive or next-of-kin to any one having such interest"); against the form of the statute in such case made and provided. (*Add a count or counts varying the intent, if it be doubtful upon the evidence.*)

No. 2.

Of a Girl under Sixteen Years of Age. (9 Geo. 4, c. 31, s. 20.) ⁽¹⁾

(*Venue.*) } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, unlawfully did take ("take or cause to be taken") C. D. out of the possession and against the will of E. D., her father ("out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her"), she the said C. D. then being an unmarried girl under the age of sixteen years, to wit of the age of fifteen years; against the form of the statute in such case made and provided.

No. 3.

Indictment for stealing Children under the Age of Ten Years. (9 Geo. 4, c. 31, s. 21.)

(*Venue.*) } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, feloniously and maliciously did

county of the same city, to wit;—"where an indictment for an offence committed in the county of any city or town-corporate is preferred at the assizes of the adjoining county, such county of the city or town is to be deemed the venue, and may either be stated in the margin of the indictment, with or without the name of the county in which the offender is to be tried, or be stated in the body of the indictment by way of venue: (*id.* s. 23, and see 14 & 15 Vict. c. 55, s. 19.) If the offence be committed within the jurisdiction of the Central Criminal Court, (see 4 & 5 Will. 4, c. 36, and 9 & 10 Vict. c. 24, as to such jurisdiction) state "Central Criminal Court, to wit," and allege the facts to have been committed "within the jurisdiction of the said court."

It is not necessary to give any addition to the accused, nor to describe him as of any parish or county, nor to use the words "with force and arms," or "against the peace," nor to state the time when the offence was committed, unless time is of the essence of the offence: (14 & 15 Vict. c. 100.) It is, however, usual to state a day and year on which the offence was committed, but no advantage can be taken of a mistake in this respect.

No indictment shall be held insufficient for the insertion of the words "against the form of the statute" instead of "against the form of the statutes," or *vice versa*, nor for want of a proper or formal conclusion: (*id.*)

⁽¹⁾ See *R. v. Mantelov*, 22 L. J. 115. M. C.; 17 Jur. 352, as to what constitutes a "taking" under this section.

by force ("force or fraud") take away ("lead or take away, or decoy or entice away, or detain") one C. D., a child then under the age of ten years, to wit of the age of seven years, with intent then and thereby to deprive one E. D., the father of the said child ("the parent or parents, or any other person having the lawful care or charge of such child"), of the possession of the said child; against the form of the statute in such case made and provided. (2nd Count.) And the jurors aforesaid, upon their oath aforesaid, do further present that the said A. B. on the day and year aforesaid, feloniously and maliciously did by force take away the said C. D., a child then under the age of ten years, to wit of the age of seven years, with intent then and thereby feloniously to steal, take, and carry away divers articles, that is to say, one necklace¹ (*stating the articles*), then being upon the person of the said child ("any article upon or about the person of such child to whomsoever such article may belong") against the form of the statute in such case made and provided.²

Precedents.

ABDUCTION.

II.—ABOMINABLE CRIME, ATTEMPTING TO OBTAIN MONEY BY ACCUSING OF.

(See "LETTER," and "UNNATURAL OFFENCE.")

III.—ABORTION.

No. 1.

For administering Poison to procure Miscarriage. (7 Will. 4 & 1 Vict. c. 85, s. 6.)

(*Venue.*) } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, feloniously and unlawfully did
administer to one C. D. ("administer to her or cause to be taken by
her") a large quantity of a certain noxious thing called savin, to wit,
one ounce of savin ("any poison or other noxious thing"), with intent
then and thereby to procure the miscarriage of the said C. D.; against
the form of the statute in such case made and provided.

ABORTION.

¹ It is not necessary to state the value or price of anything unless it be of the essence of the offence: (14 & 15 Vict. c. 100, s. 24.)

² The same section of the statute also makes it felony for any person with any such intent as aforesaid to receive or harbour any child, "knowing the same to have been by force or fraud led, taken, decoyed, enticed away or detained as aforesaid." The indictment on such a state of facts may be easily framed from the above precedent.

Precedents.

ABORTION.

No. 2.

*For using Instruments to procure Miscarriage.*¹ (7 Will. 4 & 1 Vict. c. 85, s. 6.

(Venue,) } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, feloniously and unlawfully did
use a certain instrument ("any instrument or other means whatsoever"),
called a , with intent then and thereby to procure the miscarriage
of one C. D.; against the form of the statute in such case made and
provided.

(Add a second count, stating it to be "a certain instrument to the
jurors aforesaid unknown.")

IV.—ABROAD, OFFENCES COMMITTED.

(See "HIGH SEAS.")

V.—ACCESSARY.²

No. 1.

*Principal in the Second Degree.*³

ACCESSARY.

(After stating offence of the principal in the first degree, proceed thus)—And the jurors aforesaid, upon their oath aforesaid, do further present, that E. F., on the day and year aforesaid, feloniously was present, aiding, abetting, and assisting the said A. B. to do and commit the [felony] aforesaid [against the form of the statute in such case made and provided.]

¹ See form in *Reg. v. West*, 9 C. & Kir. 784.

² By 14 & 15 Vict. c. 100, s. 15, any number of accessaries to a felony, may be charged with substantive felonies in the same indictment, notwithstanding the principal felon shall not be included in the same indictment, or shall not be in custody or amenable to justice.

³ In treason and offences below felony, and in all felonies in which the punishment of principals in the first degree, and of principals in the second degree is the same, the indictment may charge all who are present and abet the fact, as principals in the first degree (2 Hawk. c. 25, s. 64), (provided the offence admits of a participation), or specially as aiders and abettors.

APPENDIX.

ci

Precedents.

ACCESSARY.

No. 2.

*Accessory before the Fact.*¹

(a) INDICTMENT OF, TOGETHER WITH THE PRINCIPAL.

(*After charging the principal with the offence, proceed thus*)—And the jurors aforesaid, upon their oath aforesaid, do further present, that E. F., before the said felony was committed in form aforesaid, to wit, on the day of in the year of our Lord 1853, did feloniously incite and procure the said A. B. to commit the said felony in manner and form aforesaid [against the form of the statute in such case made and provided.]

(b) INDICTMENT OF, AS FOR A SUBSTANTIVE FELONY, UNDER 9 GEO. 4, c. 64, s. 9.

Same as preceding form, concluding, "against the form of the statute in such case made and provided." The principal, if unknown, may be described as "a certain person (or certain persons) to the jurors aforesaid unknown."

No. 13.

Accessory after the Fact.

(a) INDICTMENT OF, TOGETHER WITH THE PRINCIPAL.

(*After charging the principal with the offence, proceed thus*)—And the jurors aforesaid, upon their oath aforesaid, do further present, that E. F., well knowing the said A. B. to have committed the said felony in form aforesaid, afterwards to wit, on the day and year aforesaid, did feloniously receive, harbour, and maintain him the said A. B. [against the form of the statute in such case made and provided.]

(b) INDICTMENT OF, AS FOR A SUBSTANTIVE FELONY, UNDER 11 & 12 VICT. c. 46, s. 2.

Same as preceding form, concluding, "against the form of the statute in such case made and provided." The principal, if unknown, may be described as "a certain person (or certain persons) to the jurors aforesaid unknown."

VI.—ACCUSING A MAN OF AN INFAMOUS CRIME.

(*See "LETTER" and "UNNATURAL OFFENCE."*)

¹ Accessories before the fact to any felony may be indicted, tried, convicted, and punished in all respects as principals: (11 & 12 Vict. c. 46, s. 1.)

Precedents.

ALLEGIANCE.

VII.—ACKNOWLEDGMENT OF RECOGNIZANCE.

(See "FALSE PERSONATION.")

VIII.—ADMINISTERING CHLOROFORM, POISON, &c.

(See "ABORTION," "CHLOROFORM," "POISON.")

IX.—ADMIRALTY.

(See HIGH SEAS.)

X.—ALLEGIANCE.

Endeavouring to seduce a Soldier from his Allegiance, under 37 Geo. 3, c. 70, s. 1.

(*Venue.*) } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, feloniously, maliciously, and
advisedly did endeavour to seduce one C. D. (he the said C. D. then
being a person serving in Her Majesty's forces by land (*or sea*), from
his duty and allegiance to Her said Majesty), he the said A. B. at the
time he so endeavoured to seduce the said C. D. from his duty and
allegiance as aforesaid, well knowing that the said C. D. was then a
person serving in Her said Majesty's forces by land (*or sea*); against the
form of the statute in such case made and provided.

XL.—ARSON.

No. 1.

For setting Fire to a House, with intent to injure any Person. (7 Will. 4 & 1 Vict. c. 89, s. 3.)

ARSON.

(*Venue.*) } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, feloniously, unlawfully, and

maliciously did set fire to a certain dwelling-house ("any house, stable, coach-house, out-house, warehouse, office, shop, mill, malthouse, hop-oast, barn, or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them respectively shall then be in the possession of the offender, or in the possession of any other person";) ("or by 7 & 8 Vict. c. 62, s. 1, any hovel, shed,¹ or fold, or any farm-building, or any building or erection used in farming land"), of C. D., situate in the parish of , in the county of , with intent thereby then and there to injure the said C. D.² ("to injure or defraud any person," e. g., to defraud a certain Insurance Company, called); against the form of the statute in such case made and provided. (Sometimes it is advisable to add a count for attempting to set fire to a house, &c., under 9 & 10 Vict. c. 25, s. 7, vide post, p. cvii.)

Precedents.

ARSON.

No. 2.

For setting Fire to a Church or Chapel. (7 Will. 4 & 1 Vict. c. 89, s. 3.)

(Venue.) } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, feloniously, unlawfully, and
maliciously did set fire to a certain church ("any church or chapel, or
any chapel for the religious worship of persons dissenting from the united
Church of England and Ireland"), situate in the parish of , in the
county of ; against the form of the statute in such case made and
provided.

No. 3.

For setting Fire to a House, some Person being therein. (7 Will. 4 & 1 Vict.
c. 89, s. 2.)

(Venue.) } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, feloniously, unlawfully, and
maliciously did set fire to a certain dwelling-house ("any dwelling-house")
of C. D., situate in the parish of , in the county of , one E. F.
then, to wit, at the time of the committing of the felony aforesaid, being
in the said dwelling-house; against the form of the statute in such case
made and provided. (If there is any doubt as to any person having been
in the house, add a count according to form 1, p. cii., ante.)

¹ What is properly "a shed" within the statute: (*Reg. v. Amos*, 5 Cox C. C. 252; S. C. 2 Den. C. C. 65.) What is not a "shed," "outhouse," or "stable": (*Reg. v. Munson*, 2 Cox C. C. 186.)

² Upon an indictment for arson, with intent to injure the person in occupation, prisoner may be convicted, though his intent is proved to have been to obtain a reward for giving the earliest intimation of a fire at the engine station: (*Reg. v. Regan*, 4 Cox C. C. 335.)

Precedents.

ARSON.

No. 4.

For setting Fire to a Gaol. (See Reg. v. Connor, 2 Cox C. C. 65.)

No. 5.

*For setting Fire to a Railway Station, &c. under the first clause of the
14 & 15 Vict. c. 19, s. 8.*

(*Venue.*) } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, feloniously, wilfully, and mali-
ciously did set fire to a certain station ("*any station, engine-house,
warehouse, or other building*"), in the parish of , in the county
of , then and there belonging ("*belonging or appertaining*") to
a certain railway called "The Railway" ("*any railway,
dock, canal, or other navigation*"), and then being the property of
the Railway Company; against the form of the statute in such case
made and provided.

No. 6.

For setting Fire to a Coal Mine. (7 Will. 4 & 1 Vict. c. 89, s. 9.)

(*Venue.*) } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, feloniously, unlawfully, and
maliciously did set fire to a certain mine of coal ("*any mine of coal or
cannel coal*") of C. D., situate in the parish of , in the county
of ; against the form of the statute in such case made and provided.

Precedents.

ARSON.

No. 7.

For setting Fire to a Ship.¹ (7 Will. 4 & 1 Vict. c. 89, s. 6.)

(Venue,) { THE jurors for our Lady the Queen upon their
to wit. { oath present, that A. B., on the day
of , in the year of our Lord 1853, feloniously, unlawfully, and
maliciously did set fire to ("*set fire to or in anywise destroy*") a certain
ship ("*any ship or vessel, whether the same be complete or in an unfinished
state;*" if the latter, say, "*the same then being in an unfinished state,*")
called "The Spitfire," then being the property of C. D.; against the
form of the statute in such case made and provided.

No. 8.

*For setting Fire to a Ship with intent to prejudice the Owner or Underwriter.
(7 Will. 4 & 1 Vict. c. 89, s. 6.)*

(Venue,) { THE jurors for our Lady the Queen upon their
to wit. { oath present, that A. B., on the day
of , in the year of our Lord 1853, feloniously, unlawfully and
maliciously did set fire to ("*set fire to, cast away, or in anywise destroy*")
a certain ship ("*any ship or vessel,*") called "The Spitfire," then being
the property of C. D., with intent thereby then to prejudice the said C. D.,
the owner ("*owner or part owner*") of the said ship [or "one E. F., the
owner of certain goods, then laden and being on board the said ship," or
"one E. F., who had before then underwritten a certain policy of insurance
on the said ship," (or "on the freight of the said ship, or on certain goods
then being on board the said ship"), which said policy was then in full
force and operation," ("*the owner or part owner of such ship or vessel,
or of any goods on board the same, or any person that hath underwritten
or shall underwrite any policy of insurance upon such ship or vessel, or
on the freight thereof, or upon any goods on board the same,*")] against
the form of the statute in such case made and provided.

Note.—The intent may be stated in different ways in different counts.

No. 9.

For setting Fire to Ships of War, &c.

An indictment for burning ships of war may be in the same form as the preceding one, except as to the description of the property, viz. : "*any*

¹ All offences alleged to have been committed on the high seas, and other places within the jurisdiction of the Admiralty of England, may be inquired of, heard and determined by the judges of assize, and the venue laid in the margin shall be the same as if the offence had been committed in the county where the trial is had, and all material facts, which in other indictments would be averred to have taken place in the county where the trial is had, shall be averred to have taken place "on the high seas;" (7 & 8 Vict. c. 2, ss. 1 & 2.) See 11 & 12 Vict. c. 42, s. 2, as to the apprehension and commitment of persons charged with offences committed on the high seas.

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of Her Majesty's vessels of war, in Her Majesty's dockyards or any private yards, or any timber there placed for building or repairing the same, or any military, naval, or victualling stores, or other munitions of war, or any place where the same shall be kept :” (12 Geo. 3, c. 24, s. 1.) And the same as to setting on fire “any of the works or any ship or other vessel lying in or being on the canal, or in any of the docks, basins, cuts, or other works,” constructed by virtue of 39 Geo. 3, c. 69, for regulating the port of London. And the same as to setting fire to “any magazine or store of powder, or ship, boat, ketch, hoy or vessel, or the tackle or furniture thereunto belonging, not appertaining to an enemy or rebel :” (22 Geo. 2, c. 33, art. 25.)

No. 10.

For setting Fire to a Ship, with intent to Murder. (7 Will. 4 & 1 Vict. c. 89, s. 4.)

(Venue,) { THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, feloniously, unlawfully, and
maliciously did set fire to (“set fire to, cast away, or in anywise destroy”) a certain ship (“any ship or vessel”) called “The Spitfire,” then being the property of C. D., with intent thereby feloniously, wilfully, and of his, the said A. B.’s, malice aforethought, to kill and murder one E. F., then being in the said ship (or “whereby the life of one E. F., then being in the said ship, was endangered”); against the form of the statute in such case made and provided.

No. 11.

For setting Fire to Stacks of Corn, &c. (7 Will. 4 & 1 Vict. c. 89, s. 10.) (1)

(Venue,) { THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 1853, feloniously, unlawfully, and
maliciously did set fire to a certain stack of wheat (“any stack of corn, grain, pulse, tares, straw,² haulm,³ stubble, furze, heath, fern, hay, turf, peat, coals, charcoal, or wood or any steer of wood”) then being the property of C. D., against the form of the statute in such case made and provided.

¹ Under this section the intent need not be stated : (*R. v. Nevill*, 1 Moo. C. C. 458.) The offence is not of a local nature : (*R. v. Woodward*, 1 Moo. C. C. 323.)

² Sedge and rushes are not straw within the meaning of this statute, which is confined to the straw of wheat, oats, barley, and rye: (*Reg. v. Baldock*, 2 Cox C. C. 55.)

³ See indictment for firing a stack of haulm: (*Reg. v. Munson*, 2 Cox C. C. 186.)

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No. 12.

*For setting Fire to Farm Produce, &c. in Farm Buildings. (7 & 8 Vict. c. 62, s. 2.)*¹

(*Venue,*) { THE jurors for our Lady the Queen upon their
to wit. { oath present, that A. B., on the day
of , in the year of our Lord 1853, feloniously, unlawfully, and
maliciously did set fire to a stack of wood ("*any hay, straw, wood, or
other vegetable produce, being in any farm-house or farm-building, or
any implement of husbandry, being in any farm-house or farm-building*")
then being the property of C. D., and then being in a certain farm-build-
ing, to wit, a barn of the said C. D., situate in the parish of , in
the county of , with intent thereby to set fire to the said farm-
building, and to injure the said C. D. ("*with intent thereby to set fire to
such farm-house or farm-building, and to injure or defraud any person*";
against the form of the statute in such case made and provided.

No. 13.

For setting Fire to Crops. (7 & 8 Geo. 4, c. 30, s. 17.)

(*Venue,*) { THE jurors for our Lady the Queen upon their
to wit. { oath present, that A. B., on the day
of , in the year of our Lord 1853, feloniously, unlawfully, and
maliciously did set fire to a certain crop of wheat ("*any crop of corn,
grain, or pulse, whether standing or cut down, or any part of a wood,
coppice, or plantation of trees, or any heath, gorse, furze, or fern, where-
soever the same may be growing*") , then being the property of E. F.,
and then standing and growing in the parish of , in the county
of ; against the form of the statute in such case made and provided.

XII.—ATTEMPTS TO COMMIT OFFENCES.²

No. 1.

For attempting to set Fire to Buildings, &c. (9 & 10 Vict. c. 25, s. 7.)

(*Venue,*) { THE jurors for our Lady the Queen upon their
to wit. { oath present, that A. B., on the day
of in the year of our Lord 1853, feloniously, unlawfully, and
maliciously did attempt by then, &c. (state the overt act—"by any overt

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¹ Under this statute the intent must be stated, and the offence is one of local description: (*R. v. Woodward*, 1 Moo. C. C. 323; *R. v. Nevill*, 1 Moo. 458.)

² By 14 & 15 Vict. c. 106, s. 9, "if on the trial of any person charged with any felony or misdemeanor, it shall appear to the jury upon the evidence that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the same, such

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act"), feloniously, unlawfully, and maliciously to set fire to a certain dwelling-house, ("any building, vessel, or mine, or any stack or steer, or any vegetable produce of such kind, and with such intent, that if the offence were complete the offender would be guilty of felony and liable to be transported beyond the seas for the term of his natural life,") then being the property of E. F., and situate in the parish of _____ in the county of _____ with intent thereby then to injure the said E. F.; against the form of the statute in such case made and provided.

No. 2.

For attempting to Drown with intent to Murder. (7 Will. 4 & 1 Vict. c. 85, s. 3.)

(*Venue.*) { THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., on the _____ day
 of _____ in the year of our Lord 1853, feloniously and unlawfully did
 attempt to drown ("drown, suffocate, or strangle") one C. D., with
 intent then and thereby feloniously, wilfully, and of his, the said
 A. B.'s malice aforethought, to kill and murder the said C. D.; against
 the form of the statute in such case made and provided.

No. 3.

For attempting to Shoot with intent to Murder. (7 Will. 4 & 1 Vict. c. 85, s. 3.)

(*Venue.*) { THE jurors for our Lady the Queen upon their
 to wit. } oath present, that A. B., on the _____ day
 of _____ in the year of our Lord 1853, did by drawing the trigger
 ("drawing the trigger or in any other manner") of a certain pistol
 ("any kind of loaded fire-arms"), then loaded with gunpowder and one
 leaden bullet, feloniously and unlawfully attempt to discharge the said
 pistol at one C. D., with intent then and thereby feloniously, wilfully,
 and of his the said A. B.'s malice aforethought, to kill and murder the
 said C. D., against the form of the statute in such case made and
 provided. (*Add counts for attempting to shoot with intent to maim, to
 disfigure, to disable, and to do grievous bodily harm.— See post.*)

person shall not, by reason thereof, be entitled to be acquitted, but the jury shall be at liberty to return as their verdict, that the defendant is not guilty of the felony or misdemeanor charged, but is guilty of an attempt to commit the same; and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular felony or misdemeanor charged in the said indictment; and no person so tried as herein lastly mentioned shall be liable to be afterwards prosecuted for an attempt to commit the felony or misdemeanor for which he was so tried."

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No. 4.

For attempting to Poison with intent to Murder. (7 Will. 4 & 1 Vict. c. 85, s. 3.)

(*Venue.*) } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of in the year of our Lord 1853, feloniously and unlawfully did
attempt to administer to one C. D., a certain quantity of a certain deadly
poison called arsenic (“*any poison or other destructive thing*”) with
intent then and thereby feloniously, wilfully, and of his the said A. B.’s
malice aforethought to kill and murder the said C. D.; against the form of
the statute in such case made and provided.

XIII.—BANKRUPTCY, OFFENCES AGAINST THE LAW OF.

No. 1.

Against a Bankrupt for embezzling a part of his Estate to the value of Ten Pounds.
(12 & 13 Vict. c. 106, s. 251.)¹

(*Venue.*) } THE jurors for our Lady the Queen upon their oath BANKRUPTCY.
to wit. } present, that heretofore and before the committing
of the offence hereinafter mentioned, to wit, on the day
of in the year of our Lord 1853, A. B., being a trader within the
meaning of the laws relating to bankrupts, was indebted to C. D. in a
certain sum of money exceeding the sum of fifty pounds, to wit, in the
sum of sixty pounds, for the price of certain goods before then sold and
delivered by the said C. D. to the said A. B. (*or as the case may be*);
and that the said A. B., being such trader and being indebted as afore-
said, afterwards, to wit, on the day and year aforesaid, did commit an act
of bankruptcy, that is to say, by departing from his dwelling-house with
intent thereby to delay his creditors (*or as the case may be*). And the
jurors aforesaid upon their oath aforesaid, do further present that after-
wards, to wit, on the day of in the year aforesaid, a petition for
adjudication of bankruptcy against the said A. B. was filed in the Court of
Bankruptcy in Basinghall-street in the city of London (or “*the District
Court of Bankruptcy at in the county of*”); and the said A. B.
was thereupon, to wit, on the day of in the year aforesaid,
by a certain adjudication in writing under the hand of E. H., Esq., in
due form of law, adjudged and declared a bankrupt, he the said E. H.,
Esq., then being a Commissioner of Her Majesty’s Court of Bankruptcy,
and the said Court of Bankruptcy and the said E. H. respectively, then
and there being duly authorized and empowered to make such adjudica-

¹ The proceedings in bankruptcy are set out in this and the subsequent forms, but it seems to be sufficient to say, that the prisoner was adjudged bankrupt as in that part of the precedent which relates to the adjudication: (see *Reg. v. Hilton*, 2 Cox C. C. 318 on sect. 32 of 5 & 6 Vict. c. 122, which corresponds with this section (251), and sects. 252 and 253 in this respect.) The case of *R. v. Jones* (4 B. & Ad. 345), which is cited in several text books as an authority for requiring the proceedings to be set out, was decided upon 6 Geo. 4, c. 16, and may probably be distinguished upon that ground; until, however, a decision of the Court for Crown Cases Reserved has settled this point, it will be safer to frame the indictment as in the above precedents, adding counts in a more general form.

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tion in that behalf, and to act in the prosecution of the said petition;* and the said A. B. so being adjudged bankrupt as aforesaid, afterwards, to wit on the day and year last aforesaid, did feloniously embezzle ("*remove, conceal, or embezzle*") a certain part of his personal estate to the value of 10*l.*, that is to say, one gold watch of the value of 10*l.*, with intent to defraud the creditors of him the said A. B.; against the form of the statute in such case made and provided.

No. 2.

Against a Bankrupt for not surrendering. (12 & 13 Vict. c. 106, s. 251.)¹

(*As in preceding form to *.*) And the jurors aforesaid, upon their oath aforesaid, do further present, that thereupon, to wit, on the day of , in the year of our Lord 1853, a duplicate of the said adjudication of bankruptcy was served personally upon the said A. B., so adjudged bankrupt as aforesaid ("*or by leaving the same at the usual or last known place of abode or place of business of such person*") ; and that no cause having been shown to the said Court of Bankruptcy for the annulling of the said adjudication, the said Court of Bankruptcy after the expiration of seven days from the service of the said duplicate of adjudication as aforesaid, to wit, on the day of in the year last aforesaid, did cause notice of the said adjudication to be given in the *London Gazette*, and did thereby appoint two public sittings of the said Court of Bankruptcy for the said A. B. to surrender and conform according to law, the first of which said sittings was thereby then appointed for the day of then instant, at the hour of eleven of the clock in the forenoon thereof precisely, and the last of which said sittings was thereby then appointed for the day of then next, at the hour of eleven of the clock, in the forenoon thereof precisely, which said last-mentioned day was a day not less than thirty days and not exceeding sixty days from the said notice and advertisement in the said *London Gazette* as aforesaid, and was the day limited for the surrender of the said A. B. And the jurors aforesaid, upon their oath aforesaid, do further present that, afterwards, and after such notice had been given in the *London Gazette* as aforesaid, to wit, on the day of in the year aforesaid, notice in writing of his the said A. B., having been so adjudged bankrupt, and of the said sittings of the said Court of Bankruptcy, was left at the usual place of abode of the said A. B., to wit, in street, in the parish of in the county of (he the said A. B., not then being in prison), ("*served upon him personally, or left at the usual or last known place of abode or business of such person, or personal notice in case such person be then in prison*") by which said last-mentioned notice he the said A. B. was required personally to be and appear before E. H., Esq., (he the said E. H. then

¹ See as to last day for examination, Chitty's Criminal Law, vol. 2, p. 523 (Ed. 1816); *Reg. v. Kenrick* (1 Cox C. C. 146); *R. v. Dealtry* (2 Cox C. C. 428); *R. v. Hilton* (2 Cox C. C. 318.) The venue must be laid in the county in which the court to which the bankrupt should have surrendered is situate: (*R. v. Milner* (2 C. & Kir. 310.)) A count in a more general form may be added by stating in substance that the adjudication remaining in full force, notice was given in the *London Gazette* of the sittings of the court, and was then given to the bankrupt, but that he did not surrender on the day limited for that purpose, or on any other day.

being a commissioner acting in the prosecution of the said petition for adjudication of bankruptcy) on the said¹ day of then instant, at eleven of the clock in the forenoon precisely, and on the said¹ day of then next, at eleven of the clock in the forenoon precisely, at the said Court of Bankruptcy, then and there to be examined, and to make a full and true discovery and disclosure of all his the said A. B.'s estate and effects. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. so being adjudged bankrupt, and the said notices having been so left and given as aforesaid, although the said Court of Bankruptcy did sit on the said² day of in the year aforesaid, at the hour of eleven of the clock in the forenoon of the said day, and from thence until the hour of three of the clock in the said day, at Basinghall-street, in the city of London, he, the said A. B., (not having any lawful impediment to his surrender proved to the satisfaction of the said Court of Bankruptcy, or allowed by the said Court of Bankruptcy) feloniously did not on the said day of so limited for the surrender of him the said A. B. as aforesaid, and before three of the clock of that day surrender himself to the said Court of Bankruptcy, but wholly neglected and omitted so to do, and altogether failed to surrender himself at any period whatsoever on the said day, nor hath he as yet surrendered himself to the said court, with intent thereby then to defraud the creditors of him the said A. B.;³ against the form of the statute in such case made and provided.

No. 3.

Against a Bankrupt for not submitting to be examined. (12 & 13 Vict. c. 106, s. 251.)

This may be framed from the last precedent. (See *R. v. Hilton*, 2 Cox C. C. 318; *R. v. Kenrick*, 1 Cox C. C. 146.)

No. 4.

Against a Bankrupt for not discovering his Property. (12 & 13 Vict. c. 106, s. 251.)

(*As in form 1, ante, p. cix. to*.*) And afterwards, and within the time limited by law in that behalf, to wit on the day and year aforesaid, the said A. B. surrendered himself to the said court and was then and there duly sworn, and then submitted himself to be examined before the said court, and was then and there examined as to and respecting his real and personal estate: and the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B., before the time of his said examination, to wit, on the day of in the year aforesaid, was possessed of certain personal estate, to wit (*state property concealed*), and that on the day and year last aforesaid, and before his said examination,⁴ he disposed of the same to a certain person, to wit, E. F. (or "*a person*" [or

¹ This is the day of the first sitting.

² This is the day of the second sitting, being the one limited for the surrender.

³ An intent to defraud creditors must be alleged: (*R. v. Hill*, 6 Car. & Kir. 168; *R. v. Hilton, supra.*)

⁴ It is necessary to show that he disposed of the property: (*R. v. Harris*, 3 Cox C. C. 565; 19 L. J. 11, M. C.; 1 Den. C. C. 461.)

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No. 5.

Against a Bankrupt for obtaining Goods on credit by false pretences. (s. 251.)

(*As in form 1, page cix., to **)—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B., within three months next preceding the filing of the said petition for adjudication of bankruptcy, and whilst he was such trader as aforesaid, to wit, on the day of , in the year of our Lord 1853, wilfully, wickedly, and unlawfully, under the false colour and pretence of carrying on business, and dealing in the ordinary course of trade, did obtain on credit from E. F. and G. H. divers goods and chattels, whereof the said E. F. and G. H. then were the owners,* with intent then and thereby to defraud the said E. F. and G. H. thereof, to the damage of the said E. F. and G. H., and against the form of the statute in such case made and provided.

(*Second count upon the same section, for removing the goods so obtained; proceed as in preceding count to the asterisk, omitting that the goods were obtained within three months from filing petition, and omitting also the words, "wilfully, wickedly and unlawfully under the false colour and pretence of carrying on business, and dealing in the ordinary course of trade," and say instead of these words, "in the ordinary course of his said trade,"*)¹—And the jurors aforesaid, upon their oath aforesaid, do further present, that afterwards the A. B., said within three months next preceding the filing of the said petition for adjudication of bankruptcy, to wit, on the day of , in the year aforesaid, he the said A. B., then knowing that the said goods and chattels had been so obtained on credit as aforesaid, did wilfully, wickedly, and unlawfully remove (*"remove, conceal, or dispose of"*) the said goods and chattels, with intent then and thereby to defraud the said E. F. and G. H., then being the owners thereof, to the damage of the said E. F. and G. H., and against the form of the statute in such case made and provided.

(*See "PERJURY"—for Indictment against a Bankrupt for committing Perjury before Commissioners in Bankruptcy; see also "INSOLVENCY."*)

¹ It is presumed that the proper construction of the section in question is that if the goods were obtained on credit in the ordinary way of trade at any time, and then within three months before the filing of the petition were wilfully removed with intent to defraud the vendors of the goods, the offence is complete. It must however be admitted that the section is so badly expressed as to render this construction doubtful.

XIV.—BANKS, INDICTMENT FOR DESTROYING RIVER OR SEA.

(See "RIVER BANKS.")

XV.—BIGAMY, INDICTMENT FOR.

(9 Geo. 4, c. 31, s. 22.)

(*Venue,*) } THE jurors for our Lady the Queen upon their
to wit.¹ } oath present, that A. B., on the day
of , in the year of our Lord 185 , did marry and take to wife
one C. D., and then had her for his wife, and that the said A. B. after-
wards, and while he was so married to the said C. as aforesaid, to wit,
on the day of , in the year of our Lord 185 , feloniously
and unlawfully did marry and take to wife one E. F., the said C., his
former wife, being then alive ; against the form of the statute in such
case made and provided.

XVI.—BIRTH OF A CHILD, INDICTMENT FOR ENDEAVOURING TO CONCEAL.

(9 Geo. 4, c. 31, s. 14.)

(*Venue,*) } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of , in the year of our Lord 185 , was delivered of a child alive,
which said child, then, to wit, on the day and year aforesaid, died, and
that the said A. B. being so delivered of the said child as aforesaid, did
then unlawfully endeavour to conceal the birth of the said child, by

¹ The venue may be laid either in the county where the offender was apprehended, or is in custody, or in the county in which the second marriage took place. The indictment, however, need not notice the fact of the offender having been apprehended, or being in custody in the county wherein the venue is laid. (*R. v. Whiley*, 1 C. & Kir. 150, wrongly reported in 2 Moo. C. C. 186; and see *R. v. Smythies*, 1 Den. C. C. 498.)

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secret burying ("secret burying or otherwise disposing of") the dead body of the said child; against the form of the statute in such case made and provided.

[Add a second count, stating that the child was born dead, and state the means of concealment, when it is otherwise than by secret burying.]

XVII.—BLASPHEMY.

(See "LIBEL.")

XVIII.—BRIBERY.

Indictment for attempting to Bribe a Constable.

(*Venue,*) } THE jurors for our Lady the Queen upon their
to wit. } oath present, that heretofore, to wit, on the day
of , in the year of our Lord 185 , one A. B., Esquire,
then being one of the justices of our said Lady the Queen, assigned
to keep the peace for our said Lady the Queen, in and for the
county of , and also to hear and determine divers felonies,
trespasses, and other misdeeds, committed in the said county, did
then make a certain warrant under his hand and seal, in due form
of law, bearing date the day and year aforesaid, directed to all con-
stables and other peace officers of the said county, and especially to
C. D., thereby commanding them upon sight thereof to take and bring
before him the said A. B., so being such justice as aforesaid, or some
other of Her Majesty's justices of the peace for the said county, the body
of E. F., to answer, &c. [*as in the warrant*], and which said warrant
afterwards; to wit, on the day and year aforesaid, was delivered to the
said C. D., then being one of the constables of the parish of , in
the said county, to be executed in due form of law; and the jurors
aforesaid, upon their oath aforesaid, do further present, that G. H., well
knowing the premises, but unlawfully intending to pervert the due
course of law and justice, and to prevent the said E. F. from being
arrested by virtue of the said warrant, afterwards, to wit, on the day and
year aforesaid, unlawfully, wickedly, and corruptly did offer unto the
said C. D., so being constable as aforesaid, and having in his custody and
possession the said warrant so delivered to him to be executed as afore-
said, the sum of ten pounds, if he the said C. D. would refrain from
executing the said warrant, and from arresting the said E. F. under and
by virtue of the same for and during fourteen days from that time, that

is to say, from the time the said G. H. so offered the said sum of ten pounds to the said C. D. as aforesaid, and that the said G. H. did thereby then in manner and form aforesaid, attempt and endeavour to bribe the said C. D., so being constable as aforesaid, to neglect and omit to do his duty as such constable, and to refrain from arresting the said E. F. by virtue of the said warrant; in contempt of our Lady the Queen, and her laws, and to the evil and pernicious example of all others in the like case offending.

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BRIDGES.

XIX.—BRIDGES, PUBLIC.

No. 1.

For Pulling Down a Public Bridge. (7 & 8 Geo. 4, c. 30, s. 13.)

(*Venue,*) } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of in the year of our Lord 185 , feloniously, unlawfully, and
maliciously did*, pull down ("*pull down, or in anywise destroy*") a
certain public bridge situate in the parish of in the county of ;
against the form of the statute in such case made and provided.

No. 2.

For Injuring a Public Bridge. (7 & 8 Geo. 4, c. 30, s. 13.)

(*Same as preceding form to **) remove three planks from (*state the injury according to the facts*) a certain public bridge situate in the parish of in the county of with intent and so as thereby then and there to render the said bridge ("*such bridge or any part thereof*") dangerous ("*dangerous or impassable*") and that the said A. B. did thereby, then and there, render the said bridge dangerous (or "*impassable*") ; against the form of the statute in such case made and provided.

XX.—BURGLARY.

No. 1.

For Burglary and Larceny.

(*Venue,*) } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the day
of in the year of our Lord 185 , about the hour of eleven of the
clock in the night of the same day, feloniously and burglariously did

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break and enter the dwelling-house of one C. D., situate in the parish of in the county of with intent then and there feloniously and burglariously to steal, take, and carry away the goods and chattels¹ then being in the said dwelling-house,* and then in the said dwelling-house feloniously and burglariously did steal, take, and carry away twenty silver spoons, of the value of £6,² of the goods and chattels of the said C. D., then being found in the said dwelling-house.³

No. 2.

For Burglary by Breaking out of a House (7 & 8 Geo. 4, c. 29, s. 11.)

(*Venue.*) } THE jurors for our Lady the Queen upon their
to wit, } oath present, that A. B., on the day
of in the year of our Lord 185 , being in the dwelling-house of
C. D., situate in the parish of in the county of feloniously
did steal, take, and carry away twenty silver spoons, of the value of £6,
of the goods and chattels of one E. F., then being in the said dwelling-
house, and that the said A. B., so being as aforesaid in the said dwelling-
house, and having committed the felony aforesaid in manner and form
aforesaid, afterwards, to wit, on the day and year aforesaid, about the
hour of eleven of the clock in the night of the same day, then feloniously
and burglariously did break out of the said dwelling-house ; against the
form of the statute in such case made and provided.

[*A second count upon the same section for having entered the dwelling with intent to commit a felony, and then having broken out of the said dwelling-house in the night-time, may be easily framed from the above precedent.*]

No. 3.

For Burglary in the Workhouse of a Poor-law Union.

Reg. v. Frowen and others, 4 Cox C. C. 266.

¹ The ownership of the goods need not be stated in this part of the indictment, but it will be sufficient to say "the goods and chattels then being in the said dwelling-house:" (*Reg. v. Clarke*, 1 C. & Kir. 421; *Reg. v. Nicholas & Page*, 1 Cox C. C. 218.) In the subsequent part of the indictment, however, which charges the actual larceny, the ownership must be stated.

² It is not necessary to state the value, but if it amounts to 5*l.*, it will be better to state it, because, if the prisoner should be acquitted of the burglary, he may then be convicted of larceny in the dwelling-house to the value of 5*l.*

³ If there be any doubt as to the ownership of the house or goods, other counts may be added, but a variance in this respect may be amended under 14 & 15 Vict. c. 100, s. 1. If there be a doubt as to the felony which the offender intended to commit, the statement of it may be varied in different counts accordingly. If bank-notes or other valuable securities be stolen, conclude "against the form of the statute," &c.

No. 4.

Precedents.

For Burglary and Assaulting with intent to Murder. (7 Will. 4 & 1 Vict. c. 86, s. 2.)

BURGLARY.

*(Proceed as in form 1, ante, p. cxvi., to * stating the intent according to the circumstances.)* And that the said A. B. then in the said dwelling-house feloniously made an assault upon one G. H., then being in the said dwelling-house, with intent then and there feloniously, wilfully, and of his malice aforethought to kill and murder him the said G. H.; against the form of the statute in such case made and provided.

No. 5.

For Burglary and Stabbing, &c. (7 Will. 4 & 1 Vict. c. 86, s. 2.)

*(Proceed as in form 1, ante, p. cxvi., to *, stating the intent according to the circumstances.)* And that the said A. B. then in the said dwelling-house feloniously made an assault in and upon one G. H., then being in the said dwelling-house, and then and there feloniously, unlawfully, and maliciously did stab ("*stab, cut, wound, beat, or strike*") him the said G. H.; against the form of the statute in such case made and provided.

(See "CHURCH.")

MISCELLANEOUS PRECEDENTS.

No. CX.

Indictment for perjury committed upon the trial of an election petition before a committee of the House of Commons.

CENTRAL Criminal Court, } The jurors for our Lady the Queen
to wit. } upon their oath present, that the port
of Rye, during all the times hereinafter mentioned, was, and still is an
ancient borough, and that one baron of the same borough was elected
and sent, and of right ought to be elected and sent, to serve as a member
for the same borough in the Parliament of this kingdom. That heretofore
and after the making, passing, and coming into operation of a certain act
of Parliament made and passed in a certain session of Parliament holden in
the second year of the reign of His late Majesty King William the Fourth,
intituled *An Act to amend the Representation of the People of England
and Wales*, and after the making, passing, and coming into operation
of a certain other act of Parliament made and passed in a certain session
of Parliament holden in the 11th and 12th years of the reign of Her
present Majesty, Queen Victoria, intituled, *An Act to amend the Law for
the trial of Election Petitions, and before the commission of the offence herein-
after mentioned*, to wit, on the 1st day of July in the year of our Lord 1852,
our said Lady the Queen sent her writ of election to Parliament out of the
High Court of Chancery to the proper officer to whom the execution of
writs of election of a member to serve in Parliament for the said borough
of Rye then and there belonged and appertained, and still doth belong
and appertain, to wit, the constable of Her said Majesty's castle of Dover,
and warden of Her said Majesty's Cinque Ports, directed to the said
constable and warden, or his lieutenant or deputy; whereby, after setting
forth that by the advice of the council of our said Lady the Queen, for
certain arduous and urgent affairs concerning our said Lady the Queen,
the state and defence of Her United Kingdom and the Church, our said
Lady the Queen had ordered a certain Parliament to be holden at Her
City of Westminster on the 20th day of August then next ensuing, and
there to treat and have conference with the prelates, great men, and peers
of Her realm, our said Lady the Queen commanded and strictly enjoined
the said constable and warden, his lieutenant or deputy, that proclamation
of the said now reciting writ, and of the time and place of election being
first duly made for each of the ports of Dover, Hastings, and Sandwich,
they should cause to be elected two barons, and for each of the ports of
Hythe and Rye, one baron of the better and more discreet, fairly and
indifferently, by those who at the said election should be present, according
to the form of the statutes in that case made and provided they should
cause to be elected; and the names of such barons so to be elected,
whether they should be present or absent, they should cause to be inserted
in certain indentures thereupon to be made between them and those who

should be present at such election, and there at the day and place aforesaid the said constable and warden, his lieutenant or deputy, should cause to come in such manner that the said barons for themselves and the commonalty of the said ports respectively might have from them full and sufficient power to do and consent to those things which then and there by the common council of the said United Kingdom, by the blessing of God should happen to be ordained upon the aforesaid affairs, so that for want of such power, or through an improvident election of the said barons, the aforesaid affairs might in no wise remain unfinished; and the election so made distinctly and openly under their seal, and the seals of those who should be present at the said election, our said Lady the Queen, by Her said writ, commanded the said constable and warden, his lieutenant or deputy, to testify to our said Lady the Queen in Her Chancery at the day and place aforesaid, without delay, remitting to our said Lady the Queen one part of the aforesaid indentures annexed to the now reciting presents, together with the said writ; whereupon and upon receipt of the said writ, and within six days afterwards, to wit, on the said first day of July, A.D. 1852, the said constable and warden, in execution of the said writ, did make out, and cause to be delivered to E. S. B., then and there being the mayor and proper officer of and in the said borough of Rye in that behalf, a certain precept reciting the said writ, and commanding the said mayor by the burgesses of the said borough to choose one baron to serve as a member in the said next Parliament for the said borough of Rye, according to and in pursuance of the exigency of the said writ, the said mayor then and there being the proper officer to whom the execution of the said precept then and there belonged and appertained. Whereupon the said mayor, in pursuance of the said writ, and the form of the statute in that behalf, did forthwith, to wit, on the day last aforesaid, cause public notice to be given of the day, time, and place of the said election to be holden in pursuance of the said writ, that is to say at Rye aforesaid, on the 8th day of July then instant, and within eight days of the receipt of the said precept. That on the day and year last aforesaid, at Rye aforesaid, R. C. P. Esq., and W. A. M. Esq. did severally appear and offer themselves as candidates from whom one might be chosen to serve as a member of Parliament in the said next Parliament for the said borough of Rye pursuant to the said writ. That thereupon on the said day, and at the said place, of which notice had been given as aforesaid, to wit, on the said 8th day of July, A.D. 1852, at Rye aforesaid, the said mayor did duly proceed to the taking of the said election, and did take the same according to law; at which said election the said W. A. M. was by those who were present at the said election chosen as a member to serve in the said next Parliament for the said borough of Rye, as in and by the return to the said precept, and in and by the return to the said writ, filed in the said High Court of Chancery, reference being thereunto had, will fully and at large appear. That afterwards, to wit, on the said 20th day of August, A.D. 1852, the said Parliament was duly holden, and did hold and continue its first session, to wit, at Westminster, from the day last aforesaid, for a long space of time, to wit, until long after the commission of the offence hereinafter mentioned. That after the said election of the said W. A. M. as aforesaid, and after the proper recognizance had been entered into for the persons subscribing the petition hereinafter mentioned, and after the proper oath had been taken in that behalf and within the time then limited by the said House of Commons for receiving election petitions, to wit, in the said

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session of Parliament, on the 24th day of November, A.D. 1852, there was duly presented to the House of Commons a certain election petition having reference to the said election, and then and there being subscribed by one T. S. P., and divers other persons who had voted at, and had a right to vote at the said election, by which said petition the said several last-mentioned persons then and there showed to the said House of Commons in substance and to the effect following, that is to say,

“That the said petitioners were, at and during the said election, registered electors of the said borough of Rye, and claimed to have had, and had a right to vote, and did vote at the said election: that at the said election the said W. A. M. and R. C. P. were candidates to represent the said borough in Parliament: that a poll having been demanded, the same was taken by the returning officer for the said borough, on the 9th day of July, A. D. 1852: that the said W. A. M. was, by the said returning officer, declared to have a majority of legal votes at the said election, and to have been duly elected, and was returned as the member duly elected to serve in the said Parliament for the borough of Rye: that before and during the said election, the said W. A. M. was, by himself and his agents, friends, managers, and partisans, guilty of divers acts of bribery and treating, and other corrupt practices, in order to corrupt and procure, and did by his agents, friends, managers and partisans, and by many other persons employed in his behalf, by gifts, presents, money and rewards, and by offers of gifts, presents, money and rewards, and by promises, agreements and securities for money, gifts, employments and rewards, and by threats, intimidation, promises, undue influence, and other corrupt and illegal practices, acts and means, corrupt and procure divers persons having, or claiming to have votes at the said election, to give their votes in favour of or for him the said W. A. M., or to forbear to give their votes in favour of the said R. C. P.: that the said W. A. M., by the said corrupt and illegal practices, was and is wholly disabled and incapacitated to serve in the said Parliament for the said borough, and that the said election and return of the said W. A. M. were wholly null and void: that the said W. A. M. did, by himself, his friends, agents and others acting for and sanctioned by him, give or cause and procure to be given, and did promise and agree to give, and did know of and consent to the giving and procuring to be given, money, gifts and rewards, offices and places to divers persons upon certain engagements, contracts and agreements, that such persons to whom and to whose use, and in whose behalf such gifts and promises were made, should by themselves and others, at their solicitations respectively, request and command, procure and endeavour to procure the return of him the said W. A. M. at the said election: that after the issuing of the said writ for holding the said election, and before and during and after the said election, the said W. A. M. did, by himself and his agents, friends and partisans, or by divers ways and means in his behalf, or at his charge, directly or indirectly give, present and allow to persons having votes in and at the said election, money, meat, drink, entertainments and rewards, and did make promises, agreements, obligations and engagements to give and allow money, meat, drink, provisions, presents, rewards and entertainments, to and for persons having votes in and at the said election, and to and for the use, benefit and advantage, employment, profit and preferment of such persons, to induce such persons to vote at the said election for the said W. A. M., or to forbear to vote at the said election for the said R. C. P., or in order that he the said W. A. M. should and might be elected, or for

being elected to serve in the said then Parliament for the said borough of Rye: that by reason of the said last-mentioned corrupt and illegal practices the said W. A. M. then was wholly disabled, incapacitated and ineligible to serve in the said then present Parliament, for the said borough, and that the said election and return were wholly null and void: that before, during, and after the said election, the said W. A. M. did, by himself and his agents, friends and partisans, or by or with divers persons, or in divers ways and manners, directly or indirectly give a promise, or did cause, or did know or allow to be given or provided, wholly or partly at his expense, or did pay, wholly or in part, divers expenses incurred for meat, drink, entertainment and provision to and for divers persons, for the purpose of corruptly influencing divers of such persons, or divers other persons, to give their votes in the said election for the said W. A. M., or to refrain from giving their votes in the said election for the said R. C. P., or for the purpose of corruptly rewarding divers of such persons, or divers other persons, for having given their votes in the said election for the said W. A. M., or for having refrained from giving their votes at the said election for the said R. C. P.: that by reason of the last-mentioned and illegal practices, the said W. A. M. was incapable of being elected, and then was wholly disabled, incapacitated and ineligible to serve in the said then present Parliament for the said borough, and that the said election and return of the said W. A. M. then was wholly null and void: that gross, extensive, and systematic, and open and notorious bribery, treating and corruption was practised and carried on at the said election by divers persons, being agents, friends, supporters and partisans of the said W. A. M., with a view to the election of the said W. A. M., and that the said election and return of the said W. A. M. were procured by means of such bribery, treating and corruption: that by reason of the premises, and of the last-mentioned corrupt and illegal practices, the said W. A. M. was incapable of being elected, and the said election and return of the said W. A. M. were wholly null and void. Wherefore the said petitioners did pray that the House of Commons would take the premises into their consideration, and would declare that the said W. A. M. was not duly elected at the said election as member to serve in Parliament for the said borough of Rye, and ought not to have been returned thereat, but that the said R. C. P. was duly elected, and ought to have been returned, and that the said House of Commons would direct the said return to be amended accordingly, by the substitution therein of the name of R. C. P. for that of the said W. A. M., or that the said House would declare the said last election of the said W. A. M., as a member to serve in Parliament for the said borough, to have been wholly null and void, and for such further or other relief in the premises as to the said House should seem meet."

which said petition being then and there duly endorsed by a certificate under the hands of the Examiner of Recognizances of the said House of Commons that the proper recognizance in that behalf had been entered into and received by him, with the affidavit in that behalf required thereunto annexed, the said House of Commons, on the 7th day of December, A. D., 1852, did duly receive.

That in the said first session of Parliament, and on the day after the last day allowed by the said House for receiving election petitions, to wit, on the 26th day of November, A. D., 1852, the Right Honourable Charles Shaw Lefevre, then and there and still being the Speaker of the said House of Commons, by warrant under his hand according to the

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form of the statute in such case made and provided, did appoint six members of the said House of Commons, against whose return no petition was then depending, and none of whom was then a petitioner complaining of any election or return, to be members of the General Committee of Elections under the said secondly recited act, that is to say: the Right Honourable M. T. B.; the Right Honourable Sir J. T. Bart.; J. E. D., Esq.; R. P., Esq.; T. H. H. S., Esq.; and W. M., Esq.; which said warrant was on the day last aforesaid, duly laid and continued upon the table of the said house, during the three next days on which the said House of Commons met for the despatch of business, pursuant to the statute in that behalf; and the same warrant having never been disapproved of by the said house, or annulled in any manner whatsoever, and the said several persons lastly above mentioned having been all willing to serve upon the said committee under the said last-mentioned warrant, the same warrant thereupon took effect as an appointment of the said general committee; and the said several persons so appointed as aforesaid, having respectively duly taken the oaths required by the said secondly recited act, truly and faithfully to perform the duties belonging to a member of the said committee to the best of their judgment and ability without fear or favour, became and were the General Committee of Elections during the said first session of Parliament within the true intent and meaning of the last-mentioned statute.

That afterwards and during the said first session of Parliament, and before the reference hereinafter next mentioned, divers vacancies occurred in the said committee, which said vacancies from time to time were duly notified to the said House of Commons, and were duly filled up by the Speaker of the said House of Commons, according to law, who from time to time, by warrant under his hand, appointed a member or members to supply the said vacancies, until at length, at the time of the reference of the petition hereinafter next mentioned, to wit, on the 17th day of February, A. D., 1853, R. J., Esq.; the Right Honourable H. L.; W. M., Esq.; the Right Honourable Sir J. S. P., Bart.; Lord S.; and the Right Honourable S. H. W., became and were the General Committee of Elections of the said House of Commons in the said Parliament within the true intent and meaning of the said act of Parliament secondly recited, all of which said appointments to supply the said vacancies were respectively from time to time duly laid upon the table of the said House of Commons, on and before the third day on which the said House met after the said notification of the said vacancies respectively; and the said warrants appointing others of the members of the said House of Commons to fill the said vacancies, were never disapproved of by the said House of Commons.

That before the reference of the petition hereinafter next mentioned, all and every the members of the said general committee lastly above mentioned, had been duly sworn at the table of the said House of Commons, truly and faithfully to perform the duties belonging to the members of the said committee, to the best of his and their judgment without fear and favour.

That the said House of Commons afterwards, and after the said petition had been so presented and received as aforesaid, and whilst the said last-mentioned persons so constituted the said General Committee as aforesaid, did refer the said petition so presented as aforesaid to the General Committee of Elections last above mentioned for the purpose of choosing a select committee to try the said petition in manner directed

by the said lastly-mentioned act, whereby the said General Committee lastly above mentioned, then and there became and were the proper General Committee of Elections to choose the said select committee in that behalf, and then and there had lawful power so to do; wherefore the said General Committee, to wit, on the 13th day of February, in the year of our Lord, 1853, did appoint the 2nd day of March, in the year aforesaid, at Westminster aforesaid, for meeting to choose and elect a Committee to try the said petition, and did report the said last mentioned day to the said House of Commons as the day appointed by them for that purpose accordingly, on which day and place last above mentioned, the said General Committee of Elections did meet for choosing a committee to try the said petition, and from the panel then in service, prepared accordingly to the said act for the purpose of supplying members of the said house for serving on election petitions in the said session of Parliament, did select four members of the said House, to wit, the Right Honourable J. M.; R. C. T., Esq.; M. E. E., Esq.; and B. K., Esq., neither of whom was then excused or disqualified for any lawful cause whatever from trying or concurring in the trying of the said petition as the committee for trying the same, and did select from the chairman's panel then and there prepared in conformity with the said act, one of the members of the said General Committee, to wit, the said Sir J. S. P., Baronet, to act as chairman on the said committee, he, the said Sir J. S. P., being then and there in no way disqualified from acting as such chairman, and the said General Committee did thereupon, to wit, on the day and year last aforesaid, communicate to the said election committee so appointed as aforesaid, the name of the said member of the said General Committee so elected as aforesaid.

That at the meeting of the said House of Commons for the despatch of business next after the said select committee had been so appointed as aforesaid, to wit, on the 14th day of February, A. D. 1853, the said General Committee did report to the said House of Commons the names of the said members of the said select committee, and did annex to the said report the said petition, and thereupon and afterwards, and on the next day on which the said House met for the despatch of business after the said report, to wit, on the 4th day of March, A. D. 1853, and before four of the clock of the said day, the said Sir J. S. P., J. M., R. C. T., M. E. C., and B. K. then and there being the said select committee, did attend in their places in the said House of Commons, and then and there before departing the said House, were sworn at the table thereof, by the Clerk of the same House, well and truly to try the matter of the petition to be referred to them, and a true judgment to give according to the evidence to be given thereupon; whereupon the said House of Commons, to wit, on the day and year last aforesaid did refer the said petition so annexed to the said report to the said Sir J. S. P., J. M., R. C. T., M. E. E., and B. K., to be by them tried and determined according to law, and to try and determine the merits of the said petition, and of the said election, and of the return thereof, and did order them to meet within twenty-four hours after they were so sworn as aforesaid, to wit, on the 5th day of March, in the year last aforesaid, in some convenient and adjacent place, to try and determine the said petition, and the merits thereof, and of the said election and return: by virtue of which said several premises, and by force of the statute in such case made and provided, they the said Sir J. S. P., J. M., R. C. T., M. E. C., and B. K., became and were the select committee for trying and determining the said petition, and the merits

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thereof, and of the said election and return so referred to them as aforesaid. That afterwards, to wit, on the day and year last above mentioned the said select committee in pursuance of and according to the appointment last above mentioned did meet in a convenient room adjacent to the said House of Commons, properly prepared for the purpose of proceeding with the matters so referred to them as aforesaid, to wit, at Westminster, in the county of Middlesex, and within the jurisdiction of the said Central Criminal Court, and there did try the merits of the said petition, and the said several matters so referred to them as aforesaid. That after the issuing of the said writ, and before the holding of the said election for the said borough of Rye, to wit, on the 2nd day of July, A.D., 1852, a certain dinner had, by the orders of one J. S., hereinafter mentioned, been provided at a certain place in the said borough of Rye, that is to say, in a place called "The Marsh," of which said dinner the said W. A. M., and divers persons who had subsequently voted at the said election had partaken; which said dinner, at the time of the committing of the offence hereinafter mentioned had been paid for by the said J. S., and that at and upon the said trial, before the said committee, and in relation to the several matters so referred to the said committee as aforesaid, it became and was a material question and subject of inquiry, and it became and was material and necessary that the said committee should enquire and be informed on whose behalf and by whose authority the said dinner had been so provided as aforesaid, and who had ultimately borne the expenses thereof, and whether or not the said W. A. M., and whether or not the said J. S. had had anything to do with the payment of any bill or bills of the said W. A. M., and whether or not he the said J. S. had paid any bills relating to the said dinner for the said W. A. M., and whether or not the said J. S. had been repaid for the said dinner, and by whom, and whether or not the said J. S. had been repaid any and what part of the expenses of the said dinner, or received any and what money on account thereof, and whether the said J. S. then looked to any person and to whom, to be remunerated for that dinner, and whether or not it was the fact that the said J. S. then looked to one H. M. C. to be remunerated for that dinner, and whether or not the said J. S. expected to receive payment for the said dinner, and from whom, and whether from the said H. M. C. That at and upon the said trial the said J. S. did appear before the said committee to be examined as a witness upon the said trial, and touching and concerning the matters last aforesaid, and the several matters and things alleged in the said petition; and the said J. S. was then and there, by and before the said committee, duly sworn as such witness, and did duly take his corporal oath upon the Holy Gospel of God to speak the truth and give the evidence at and upon such his examination; the said committee then and there having sufficient and competent lawful power and authority to administer the said oath to the said J. S. in that behalf. That the said J. S. being so sworn as aforesaid, then and there, to wit, on the day and year aforesaid, at Westminster aforesaid, on the trial aforesaid, as such witness as aforesaid, before the said committee, was examined upon his said oath, and that the said J. S. not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and devising and wickedly intending by the false swearing hereinafter mentioned to deceive the said committee in the premises, then and there, to wit, on the said 5th day of March, A.D., 1853, at Westminster aforesaid, in the county of Middlesex aforesaid, and within the jurisdiction of the said

Central Criminal Court, as such witness as aforesaid, upon the trial aforesaid, upon the examination aforesaid, upon his oath aforesaid, unlawfully, falsely, wickedly, knowingly, wilfully, corruptly, and maliciously did say, depose, swear, and give evidence, amongst other things, in substance, and to the effect following, that is to say, that he the said J. S. had nothing to do with the payment of any bill of the said W. A. M.; that he the said J. S. had never been repaid any part of the expenses of the said dinner; that he the said J. S. had never received a shilling on account of the said dinner; that he the said J. S. then looked to the said H. M. C. to be remunerated for the said dinner; and that he the said J. S. then expected to receive payment for the said dinner whenever it might be convenient to the said H. M. C. Whereas, in truth and in fact, at the time when the said J. S. so said, deposed, swore, and gave evidence as aforesaid, the said J. S. had had to do with the payment of a bill of the said W. A. M.; and whereas in truth and in fact, the said J. S. had then had to do with the payment of and had paid a certain bill of the said W. A. M., to wit, for the amount of 226*l.*, for the said dinner; and whereas in truth and in fact, the said J. S., at the time he so said, deposed, swore, and gave evidence as aforesaid, had been repaid for the said dinner; and whereas in truth and in fact, the said J. S. had been then repaid for the said dinner by the said W. A. M.; and whereas in truth and in fact, the said J. S. had then been repaid a large sum of money, to wit, the said sum of 226*l.*, on account of the said dinner; and whereas in truth and in fact, the said J. S. did not, at the time he so said, deposed, swore, and gave evidence as aforesaid, look to the said H. M. C., or any person or persons whatever, to be remunerated for the said dinner, or expect to receive payment for the same when it might be convenient to the said H. M. C., as the said J. S. so said, deposed, swore, and gave evidence as aforesaid. And so the jurors, upon their oath aforesaid, do say that the said J. S., on the said 5th day of March aforesaid, at Westminster aforesaid, in the county of Middlesex aforesaid, and within the jurisdiction of the said Central Criminal Court, as such witness as aforesaid, upon the examination aforesaid, upon his oath aforesaid, before the committee aforesaid so appointed as aforesaid, under the provisions of the said act hereinbefore secondly recited, and then and there having competent power and authority to administer the said oath as aforesaid, of his own act and consent, and of his own most wicked and corrupt mind, unlawfully, falsely, wickedly, wilfully, knowingly, maliciously, and corruptly did give false evidence and commit wilful and corrupt perjury in manner aforesaid, and against the form of the statute in such case made and provided, in contempt of our said Lady the Queen and her laws, and against the peace of our said Lady the Queen, her Crown and dignity.

2nd Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that heretofore and after the making, passing, and coming into operation of the Acts of Parliament in the first count of this indictment mentioned, and during the session of Parliament holden in the 15th and 16th years of the reign of Her present Majesty, to wit, at Westminster, T. S. P., and divers other persons who had voted at and had a right to vote for the election of a Member of Parliament, in the said Parliament, at a certain Parliamentary election theretofore holden for the borough of Rye, in the county of Sussex, did subscribe and present their petition to the Honourable the Commons of the United Kingdom of Great Britain and Ireland, then in Parliament assembled, complaining of the undue

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Indictment for
perjury com-
mitted upon the
trial of an
election petition
before a
committee of
the House of
Commons.

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Indictment for
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mitted upon the
trial of an
election petition
before a
committee of
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election and return of W. A. M., as a member to serve in the said Parliament as representative of the said borough of Rye, and that thereupon such proceedings were had and taken according to the form of the said statute secondly recited, and the usages and customs of Parliament: that afterwards, to wit, on the 4th day of March in the year last aforesaid, at Westminster aforesaid, in the county of Middlesex aforesaid, and within the jurisdiction of the said Central Criminal Court, the said House of Commons did duly refer and cause to be referred the said petition to a certain select committee of the said House, then and there duly chosen and appointed, and sworn under the provisions of the said secondly recited act, to wit, the said Sir J. S. P., J. M., R. C. T., M. E. C. and B. K. to try and determine the merits of the said petition, and of the return of the said W. A. M., as a member of Parliament to represent the said borough of Rye in Parliament: that on the day and year last aforesaid, the said select committee, according to the provisions of the said hereinbefore secondly recited statute, did meet at Westminster aforesaid, in the said county of Middlesex, and within the jurisdiction of the said Central Criminal Court, for the purpose of proceeding with the matters referred to them by the said petition, and there to try, and determine the merits of the said petition, and of the said election and return, and there did try the merits of the said petition and election, and return accordingly: that theretofore, to wit, on the 2nd day of July, A.D. 1852, a certain dinner had by the orders of the said J. S. been provided at a certain place within the said borough of Rye, that is to say at a place called "The Marsh," of which said dinner, as well, the said W. A. M., as divers persons who had subsequently voted at the said election so complained of as aforesaid, had partaken, and which said dinner at the time of the committing of the offence hereinafter mentioned, had been paid for by the said J. S.: that at and upon the said trial, and in relation to the matters so referred to the said committee as aforesaid, it became and was a material question and subject of inquiry, and it became and was material and necessary, that the said committee should inquire and be informed on whose behalf and by whose authority the said dinner had been so provided as aforesaid, and also who had ultimately borne the expenses thereof, and whether or not the said W. A. M., and whether or not the said J. S., had had anything to do with the payment of any bill or bills of the said W. A. M., and whether or not the said J. S. had paid any bill relating to the said dinner for the said W. A. M.; and whether or not the said J. S. had been repaid for the said dinner, and by whom, and whether or not the said J. S. had been repaid any, and what part of the expense of the said dinner, or received any and what money on account thereof; and whether the said J. S. then looked to any person, and to whom, to be remunerated for the said dinner; and whether or not it was the fact that the said J. S. then looked to one H. M. C. to be remunerated for the said dinner; and whether or not the said J. S. then expected to receive payment for the said dinner, and from whom, and whether from the said R. M. C. That at and upon the said trial the said J. S. did appear before the said committee to be examined as a witness upon the said trial, and the said J. S. was then and there by and before the said committee duly sworn as such witness, and did take his corporal oath upon the Holy Gospel of God to speak the truth, and give true evidence on such his examination, the said committee then and there having sufficient and competent authority to administer the said oath to the said J. S. in that behalf; that the said J. S. being

so sworn as aforesaid, then and there, to wit, on the day and year aforesaid, at Westminster aforesaid, as such witness as aforesaid, was examined, and that the said J. S. not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and devising and wickedly intending by the false swearing hereinafter mentioned, to deceive the said committee in the premises, then and there, to wit, on the said 5th day of March, A.D. 1853, at Westminster aforesaid, in the county of Middlesex, and within the jurisdiction of the said Central Criminal Court as such witness as aforesaid, upon the trial aforesaid, upon the examination aforesaid, upon his oath aforesaid, unlawfully, falsely, knowingly, wilfully, wickedly, corruptly and maliciously did say, depose, swear, and give evidence, amongst other things, in substance and to the effect following, that is to say, that he the said J. S. had had nothing to do with the payment of any bill of the said W. A. M. : that he the said J. S. had never been repaid for the said dinner by any one : that he the said J. S. had never been repaid any part of the expenses of the said dinner : that he the said J. S. had never received a shilling on account of the said dinner : that he the said J. S. then looked to the said H. M. C. to be remunerated for the said dinner, and that he the said J. S. then expected to receive payment for the said dinner, whenever it might be convenient to the said H. M. C. Whereas, in truth and in fact, at the time when the said J. S. so said, deposed, swore, and gave evidence as aforesaid, the said J. S. had had to do with the payment of a bill of the said W. A. M. : and whereas, in truth and in fact, the said J. S. had then had to do with the payment of, and had paid a certain bill of the said W. A. M., to wit, for the amount of 226*l.* for the said dinner : and whereas, in truth and in fact, the said J. S., at the time he so said, deposed, swore, and gave evidence as aforesaid, had been repaid for the said dinner : and whereas, in truth and in fact, the said J. S. had then been repaid for the said dinner by the said W. A. M. : and whereas, in truth and in fact, the said J. S. had then been repaid a large sum of money, to wit, the said sum of 226*l.*, on account of the said dinner : and whereas, in truth and in fact, the said J. S. did not, at the time he so said, deposed, swore, and gave evidence as aforesaid, look to the said H. M. C., or any person whatever, to be remunerated for the said dinner, or expect to receive payment for the same when it might be convenient for the said H. M. C., as the said J. S. so said, deposed, swore, and gave evidence as aforesaid. And so the jurors aforesaid, upon their oath aforesaid, do say that the said J. S., on the said 5th day of March, A. D. 1853, at Westminster aforesaid, in the county of Middlesex aforesaid, and within the jurisdiction of the said Central Criminal Court, as such witness as aforesaid, upon his examination aforesaid, upon his oath aforesaid, before the committee aforesaid, so appointed as aforesaid, under the provisions of the said act hereinbefore secondly recited, and then and there having competent lawful power and authority to administer the said oath as aforesaid, of his own act and consent, and of his own most wicked and corrupt mind, unlawfully, falsely, wilfully, wickedly, knowingly, corruptly, and maliciously did give false evidence, and commit wilful and corrupt perjury, in manner aforesaid, against the form of the statute in such case made and provided, in contempt of our said Lady the Queen and her laws, and against the peace of our said Lady the Queen, her Crown and dignity.

Precedents.

No. CX.
Indictment for perjury committed upon the trial of an election petition before a committee of the House of Commons.

No. CXI.

Indictment under the Bankrupt Law Consolidation Act against a Bankrupt for not surrendering upon the days duly appointed for that purpose.

CENTRAL Criminal Court, } The jurors for our Lady the Queen upon
to wit. } their oaths present, that heretofore,
and after the making, passing, and coming into operation of a certain
act of Parliament, made and passed in a certain session of Parliament
holden in the 12th and 13th years of the reign of her present Majesty,
called "The Bankrupt Law Consolidation Act, 1849," and before and at
the time of the felonious omission and offence hereinafter next mentioned,
to wit, on the 30th October, 1851, M. T. S. W., hereinafter mentioned,
was a trader liable to become a bankrupt, within the true intent and
meaning of the said act, and of the law then in force relating to bank-
rupts in England, and being such trader as aforesaid, had become and
was justly and truly indebted to W. W., and others his partners in trade,
in a certain sum of money exceeding the amount of 50*l.*, to wit, the sum
of 150*l.* and upwards; and had also become and was justly and truly
indebted to W. H. H., his partners in trade, in a certain other sum of
money exceeding the sum of 50*l.*, to wit, the sum of 88*l.* 2*s.* 9*d.*, and
upwards, and in divers sums of money to other creditors. That the said
M. T. S. W. being such trader as aforesaid, and whilst he was so indebted
as aforesaid, afterwards and after the making, passing, and coming into
operation of the said act, and before the felonious commission and offence
hereinafter mentioned, did commit divers acts of bankruptcy, within the
true intent and meaning of the said act, to wit, by departing this realm,
and then remaining abroad, and by departing from his dwelling-house
and otherwise absenting himself with intent, by the said acts and each of
them, to defeat and delay his several creditors aforesaid; and that the
said M. T. S. W. being such trader as aforesaid, and whilst he was so
indebted to the said W. H. H. and others, as aforesaid, heretofore and
after the making, passing, and coming into operation of the said act,
before the felonious omission and offence hereinafter mentioned, did com-
mit a certain other act of bankruptcy, to wit, the act of bankruptcy here-
inafter in that behalf mentioned, whereupon and afterwards, to wit, on
the said 30th day of October, 1851, and within twelve months after the
committing of the said several acts of bankruptcy, the said W. W. and
others, his partners in trade, according to the form of the statute in such
case made and provided, and in the form specified in schedule M.,
annexed to the said act, did present their petition for adjudication of
bankruptcy against the said M. T. S. W., to the Court of Bankruptcy,
within the district of which the said M. T. S. W. had resided and carried
on business for six months next immediately preceding the said time of
filing the said petition, to wit, in Basinghall-street, in London, and by
the said petition did show to the said Court of Bankruptcy that the said
M. T. S. W. being a trader, and having carried on business for six
calendar months next immediately preceding the date of the said petition,
within the district of the said court, was then indebted to the said peti-
tioner in the sum of 50*l.*, and that the said petitioner had then been
informed and believed that the said M. T. S. W. did then lately commit
an act of bankruptcy, within the true intent and meaning of the Court of
Bankruptcy; and by the same petition the said petitioners did pray the
said Court of Bankruptcy that, on proof of the requisites in that behalf,

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Indictment
under Bankrupt
Law Consolidation
Act against
bankrupt for not
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adjudication of bankruptcy might be made against the said M. T. S. W., the truth of which said petition and the several allegations therein, W. W. the younger, one of the said petitioners, then and there, in and before the said Court of Bankruptcy, verified, upon his oath by affidavit, in the form specified in Schedule N. to said act annexed, as by the said petition and act filed in the said Court of Bankruptcy, reference being thereunto had, will more fully and at large appear. That the said W. W. and others, having so filed his said petition as aforesaid, from and after the said 30th October, 1851, did altogether fail to proceed thereon, and did not obtain or seek to obtain any adjudication of bankruptcy thereon against the said M. T. S. W., wherefore and afterwards, and after the expiration of three days after the said petition was so filed as aforesaid, to wit, on the 4th November, 1851, the said W. W. and others, having so failed to proceed and obtain adjudication of bankruptcy against the said M. T. S. W. as aforesaid, within the said three days, the said W. H. H. and others, his partners in trade, then and there, and at the time of the said acts of bankruptcy, being creditors of the said M. T. S. W. as aforesaid, did apply to the said court for adjudication of bankruptcy, upon said petition against M. T. S. W.; and thereupon, to wit, on the day and year last aforesaid, did give and cause to be given to the said Court of Bankruptcy proof of the said debt so then due to them, the said W. H. H. and others, from the said M. T. S. W. to the amount of 50*l.* and upwards, as aforesaid. Whereupon the said Court of Bankruptcy, upon such application, and upon proof of the said last-mentioned debt as aforesaid, and of the said debt having accrued and been due to and claimable by the said W. H. H. and others previously to the said acts of bankruptcy and of the said trading of the said M. T. S. W., and of the act of bankruptcy hereinafter next mentioned, that is to say, an act of bankruptcy then committed by the said M. T. S. W. after the accruing of the said debt, to wit, the making of a certain fraudulent gift, delivery, and transfer of divers goods and chattels of the said M. T. S. W., to wit, to one J. P., with intent to defeat and delay the creditors of the said M. T. S. W., and of the several matters required in the said petition to be proved on that behalf, afterwards, to wit, on the 6th day of November, in the year of our Lord 1851, did duly adjudge the said M. T. S. W. to be a bankrupt, according to the form of the said statute in that behalf. That afterwards, to wit, on the day and year last aforesaid, a duplicate of the said adjudication was duly served upon the said M. T. S. W., so adjudged bankrupt as aforesaid, by leaving the same at his then last known place of abode and place of business, to wit, at Romford, in the county of Essex; whereupon, and after the expiration of seven days from the said service of the said adjudication, no cause having in the meantime been shown to the said Court of Bankruptcy for the annulling of the said adjudication, to wit, on the 14th day of November, 1851, the said Court of Bankruptcy did forthwith give and cause to be given, notice of such adjudication in the *London Gazette*, and did thereby appoint two public sittings of the said Court of Bankruptcy, at Basinghall-street, in London aforesaid, for the said M. T. S. W. to surrender and conform according to law, the first of which said sittings was thereby then and there appointed to be holden on the 25th day of November then instant, at the hour of three o'clock in the afternoon of that day precisely; and the second of which said sittings was thereby then and there appointed to be holden on the 23rd day of December then next, at the hour of twelve of the clock at noon thereof precisely, which said last-mentioned day was a day not less than thirty days, and not ex-

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 under Bankrupt
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 Act against
 bankrupt for not
 surrendering.

ceeding sixty days, from such advertisement, and thereby was made, became, and was the day limited for the said surrender of the said M. T. S. W., to wit, at the said court in Basinghall-street aforesaid. That afterwards, to wit, on the 14th day of November, in the year of our Lord 1851, and before the felonious omission and offence hereinafter mentioned, notice in writing of the filing of the said petition for the adjudication of bankruptcy against the said M. T. S. W., and of the said sittings so appointed as aforesaid, was left at the then last known place of abode and business of the said M. T. S. W. (to wit, at Romford, in the county of Essex), he not then being in prison, by which said last-mentioned notice he, the said M. T. S. W., was then and there required personally to be and appear at the said Court of Bankruptcy in Basinghall-street aforesaid, to wit, before E. H., Esq., then and there being one of the commissioners of the said court, as well on the said 25th day of November, in the year of our Lord 1851, at the hour of three o'clock in the afternoon of the said day precisely, as on the said 23rd day of December, at the hour of twelve of the clock at noon of the same day precisely, then and there to be examined and to make a full and true disclosure and discovery of all his estate and effects according to law; and notice was thereby given to him, the said M. T. S. W., that the said 23rd day of December, in the year of our Lord 1851, then and there was the day limited by the said Court of Bankruptcy for the said surrender. That the said time so appointed for the said surrender having been in no way altered or enlarged, the said Court of Bankruptcy afterwards, as well on the said 25th day of November, at the said hour of three o'clock in the afternoon thereof, as on the said 23rd day of December, at the said hour of twelve of the clock at noon thereof, did hold the said sittings so notified as aforesaid, to wit, in Basinghall-street aforesaid, in order that the said M. T. S. W. might then and there surrender and conform according to law, and the said notices in that behalf. And the jurors aforesaid, upon their oath aforesaid, do further present that, notwithstanding the said notice in that behalf mentioned, had been so given in the *London Gazette* as aforesaid, and, notwithstanding the said notice in that behalf mentioned, had been left at the last known place of abode and business of the said M. T. S. W. as aforesaid; and although the said Court of Bankruptcy, in pursuance of and in conformity with the said notices, did hold the said sitting on the said day limited for the said surrender, to wit, the said 23rd day of December, in the year of our Lord 1851, at Basinghall-street, in London aforesaid, and within the jurisdiction of the said Central Criminal Court; and although the said Court of Bankruptcy did, on the said day, hold the said sitting at and from the said hour of twelve of the clock at noon of the said day, until long after the hour of three of the same day; nevertheless, he, the said M. T. S. W., being then and there so adjudged bankrupt as aforesaid, did not nor would surrender himself to the said Court of Bankruptcy on the said day limited for his said surrender, and before three of the clock of such day, but then and there in London aforesaid, and within the jurisdiction of the said Central Criminal Court, feloniously, unlawfully, and contemptuously did altogether fail and omit so to do, and hath always failed and omitted to surrender himself, and hath never surrendered himself to the said Court of Bankruptcy in London, with intent, by the felonious omission aforesaid, to defraud the said several creditors. That no lawful impediment to the said required surrender of the said M. T. S. W. hath ever been proved to the satisfaction of the said Court of Bankruptcy, or been allowed by the said court

by a memorandum thereof made upon the proceedings in the said bankruptcy, or in any manner whatever ; against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

Second Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that heretofore and after the making, passing, and coming into operation of the said act of Parliament in the first count of this indictment recited, and before and at the time of the felonious omission and offence hereinafter mentioned, to wit, on the 30th day of October, in the year of our Lord 1851, the said M. T. S. W. was a trader liable to become a bankrupt within the true intent and meaning of the said act, and of the laws then in force relating to bankrupts in England, and being such trader as aforesaid had become and was justly and truly indebted to W. W. and others his partners, in a certain sum of money exceeding the amount of 50*l.*, to wit, the sum of 150*l.* and upwards, and divers sums of money to other creditors. That the said M. T. S. W., being such trader as aforesaid, and whilst he was so indebted as aforesaid, afterwards and after the making, passing, and coming into operation of the said act, and before the felonious omission and offence hereinafter mentioned, did commit divers acts of bankruptcy within the true intent and meaning of the said act by departing this realm and then remaining abroad, and by departing from his dwelling-house and otherwise absenting himself, with intent by the said acts and each of them, to defeat and delay his creditors aforesaid; whereupon and afterwards, to wit, on the said 30th day of October, in the year of our Lord 1851, and within twelve months after the committing of the said acts of bankruptcy, the said W. W., and others his partners in trade, according to the form of the statute in such case made and provided, did present their petition setting forth the premises to the said Court of Bankruptcy in London, then and there being the district in which the said M. T. S. W. had resided and carried on business for six months next immediately preceding the said time of filing the said petition, and by the said petition did pray that the said M. T. S. W. might be adjudged bankrupt. That the said W. W. and others having failed to proceed and obtain adjudication of bankruptcy against the said M. T. S. W. within three days of the filing of the said petition, W. H. H., and others his partners in trade, afterwards, to wit, on the 4th day of November, in the year of our Lord 1851, then being other creditors of the said M. T. S. W. did apply to the said Court of Bankruptcy, for adjudication of bankruptcy against the said M. T. S. W. upon the said petition, and did give proof to the said Court of Bankruptcy of said M. T. S. W., then and at the time of divers acts of bankruptcy theretofore committed by the said M. T. S. W., being indebted to them the said W. H. H. and others to the amount of 50*l.* and upwards, and also proof of the trading and acts of bankruptcy of the said M. T. S. W. according to the requisites of the statute in that behalf. That such proceedings were thereupon had and taken upon the said petition in the said Court of Bankruptcy, that afterwards, to wit, on the 6th November, 1851, the said M. T. S. W. became and was by the said court duly declared and adjudged bankrupt. That thereupon and afterwards, to wit, on the 14th November, 1851, the said Court of Bankruptcy did forthwith give and cause to be given notice of such adjudication in the *London Gazette*, and did thereby appoint two public sittings of the said Court of Bankruptcy, in Basinghall-street, in London aforesaid, for the said

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 No. CXI.
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 bankrupt for not
 surrendering.

M. T. S. W. to surrender and conform according to law ; the first of which said sittings was thereby then and there appointed to be holden in Basinghall-street aforesaid, on the 25th November then instant, at the hour of three o'clock in the afternoon of that day precisely, and the last of which said sittings was thereby then and there appointed to be holden in Basinghall-street aforesaid, on the 23rd of December then next, at the hour of twelve o'clock at noon thereof precisely, which said last-mentioned day, by the said advertisement, was made and became and was the day limited for the said surrender of the said M. T. S. W., to wit, at the Court of Bankruptcy, in Basinghall-street aforesaid. That afterwards, to wit, on the day and year last aforesaid, and before the felonious omission and offence hereinafter mentioned, notice in writing of the said day so limited for the said surrender was left at the usual and last known place of abode and business of the said M. T. S. W., he not then being in prison; and the said M. T. S. W. was thereby required to surrender himself to the said Court of Bankruptcy, to wit, in Basinghall-street aforesaid, on the said day so limited for his said surrender accordingly. That the said M. T. S. W. having been and being so adjudged bankrupt as aforesaid, and the said notices having been so given and served as aforesaid, did not nor would surrender himself to the said Court of Bankruptcy in London aforesaid, on the said day limited for the said surrender, and before three of the clock of such day ; but then and there at St. Michael Bassishaw in London, and within the jurisdiction of the said Central Criminal Court feloniously, unlawfully, and contemptuously, did altogether fail and omit so to do, and hath always failed and omitted so to surrender himself, and hath never surrendered himself to the said Court of Bankruptcy, with intent by the felonious omission aforesaid to defraud his said creditors. That no lawful impediment to the said required surrender of the said M. T. S. W. hath ever been proved to the satisfaction of the said Court of Bankruptcy, or been allowed by the said court by a memorandum thereof made upon the proceedings in the said bankruptcy, or in any manner whatever ; against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

Third Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that heretofore, and after the making, passing, and coming into operation of the said act of Parliament in the first count of this indictment recited, and before and at the time of the felonious omission and offence hereinafter mentioned, to wit, on the 6th day of November, 1851, the said M. T. S. W. was adjudged bankrupt ; and that the said M. T. S. W. being so adjudged bankrupt as aforesaid upon the day limited for his surrender as such bankrupt, to wit, on the 23rd day of December, 1851, and before three of the clock of the said day ; and after notice thereof in writing left at his usual or last known place of abode and business (he not then being in prison), and notice given in the *London Gazette* of the filing of the said petition for the said adjudication of bankruptcy against him, and of the sittings of the said Court of Bankruptcy, to wit, in the matter of the said petition, did not nor would surrender himself to the Court of Bankruptcy, in London, as he might, could, and ought to have done ; but then and there, at St. Michael Bassishaw, in London, and within the jurisdiction of the said Central Criminal Court, feloniously, unlawfully, and contemptuously, and after such notices had been given and served respectively as aforesaid, did altogether fail and omit so to do, and hath always failed and omitted so

to do, and hath never surrendered himself to the said Court of Bankruptcy in London aforesaid, as he could, might, and ought to have done as aforesaid; with intent by the felonious omissions aforesaid to defraud the creditors of the said M. T. S. W. That no lawful impediment to the said required surrender of the said M. T. S. W. hath ever been proved to the satisfaction of the said Court of Bankruptcy, or been allowed by the said court by a memorandum thereof made upon the proceedings in the said bankruptcy or in any manner whatever; against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

Precedents.

No. CXI.
Indictment
under Bankrupt
Law Consolidation
Act against
bankrupt for not
surrendering.

No. CXII.

Indictment under the Bankrupt Law Consolidation Act against a Bankrupt for removing, concealing and embezzling his property, with intent to Defraud his Creditors.

CENTRAL Criminal Court, } The jurors for our Lady the Queen upon
to wit. } their oaths present, that heretofore,
and after the making, passing, and coming into operation of a certain act of Parliament, made and passed in a certain session of Parliament, holden in the 12th and 13th years of Her present Majesty Queen Victoria, called "The Bankrupt Law Consolidation Act, 1849," and before and at the time of the commission of the offence hereinafter next mentioned, to wit, on the 30th October, 1851, M. T. S. W., hereinafter mentioned, was a trader liable to become bankrupt within the true intent and meaning of the said act, and of the laws then in force relating to bankrupts in England, and being such trader as aforesaid, had become and was justly and truly indebted to W. W. and others, his partners in trade, in a certain sum of money exceeding the amount of 50*l.* to wit, the sum of 150*l.* and upwards, and had also become and was justly and truly indebted to W. H. H. and others, his partners in trade, in a certain other sum of money exceeding the sum of 50*l.*, to wit, the sum of 88*l.* 2*s.* 9*d.* and upwards, and in divers sums of money to other creditors.

That the said M. T. S. W., being such trader as aforesaid, and whilst he was so indebted as aforesaid, afterwards and after the making, passing and coming into operation of the said act, and before the commission of the offence hereinafter mentioned, did commit divers acts of bankruptcy, within the true intent and meaning of the said act, to wit, by departing this realm, and then remaining abroad, and by departing from his dwelling-house, and otherwise absenting himself, with intent by the said acts and each of them to defeat and delay his several creditors aforesaid; and that the said M. T. S. W., being such trader as aforesaid, and whilst he was so indebted to the said W. H. H. and others, as aforesaid, heretofore and after the making, passing and coming into operation of the said act, and before the commission of the offence hereinafter mentioned, did

Precedents.
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 No. CXIL.
 Indictment
 under Bankrupt
 Law Consolida-
 tion Act against
 bankrupt for
 concealing
 property.

commit a certain other act of bankruptcy, to wit, the act of bankruptcy hereinafter in that behalf mentioned; whereupon and afterwards, to wit, on the said 30th October, 1851, and within twelve months after the committing of the said several acts of bankruptcy, the said W. W., and others his partners in trade, according to the form of the statute in such case made and provided, and in the form specified in Schedule M. annexed to the said act, did present their petition for adjudication of bankruptcy against the said M. T. S. W. to the Court of Bankruptcy, within the district of which the said M. T. S. W. had resided and carried on business for six months next immediately preceding the said time of filing the said petition, to wit, in Basinghall-street in London, and by the said petition did show to the said Court of Bankruptcy that the said M. T. S. W. being a trader, and having carried on business for six calendar months next immediately preceding the date of the said petition, within the district of the said court, was then indebted to the said petitioners in the sum of 50*l.*, and that the said petitioners had then been informed and believed that the said M. T. S. W. did then lately commit an act of bankruptcy within the true intent and meaning of the law of bankruptcy; and by the same petition the said petitioners did pray the said Court of Bankruptcy that, on proof of the requisites in that behalf, adjudication of bankruptcy might be made against the said M. T. S. W., the truth of which said petition, and the several allegations therein, W. W., the younger one of the said petitioners, then and there, in and before the said Court of Bankruptcy, verified upon his oath by affidavit in the form specified in Schedule N. to the said act annexed, as by the said petition and affidavit filed in the said Court of Bankruptcy, reference being thereunto had, will more fully and at large appear; that the said W. W. and others having so filed their said petition as aforesaid, from and after the said 30th day of October, in the year of our Lord 1851, did altogether fail to proceed therein, and did not obtain or seek to obtain any adjudication of bankruptcy thereon against the said M. T. S. W.; wherefore and afterwards, and after the expiration of three days after the said petition was so filed as aforesaid, to wit, on the 4th day of November in the year of our Lord 1851, the said W. W. and others having so failed to proceed and obtain adjudication of bankruptcy against the said M. T. S. W. as aforesaid, within the said three days, the said W. H. H., and others his partners in trade, then and there, and at the time of the said acts of bankruptcy, being creditors of the said M. T. S. W. as aforesaid, did apply to the said court for adjudication of bankruptcy upon the said petition against the said M. T. S. W.; and thereupon, to wit, on the day and year last aforesaid, did give and cause to be given to the said Court of Bankruptcy proof of the said debt so then due to them the said W. H. H. and others from the said M. T. S. W. to the amount of 50*l.* and upwards as aforesaid; whereupon the said Court of Bankruptcy, upon such application, and upon proof of the said last-mentioned debt as aforesaid, and of the said debt having accrued and been due to and claimable by the said W. H. H. and others, previously to the said acts of bankruptcy, and of the said trading of the said M. T. S. W., and of the act of bankruptcy hereinafter next mentioned, that is to say, an act of bankruptcy then committed by the said M. T. S. W., after the accruing of the said debt, to wit, the making of a certain fraudulent gift, delivery, and transfer of divers goods and chattels of the said M. T. S. W., to wit, to one J. P., with intent to defeat and delay the creditors of the said M. T. S. W. afterwards, to wit, on the

6th November, 1851, did duly adjudge the said M. T. S. W. to be bankrupt according to the form of the said statute in that behalf.

That during all the times hereinbefore mentioned the said M. T. S. W. was possessed of divers goods, chattels, moneys and personal estate, to wit, 500 yards of calico, 500 yards of linen, 500 yards of woollen cloth, 500 yards of printed calico, divers large quantities of hosiery goods, and divers bills of exchange, promissory notes, securities for the payment of money, and divers moneys amounting altogether to a large amount in value, to wit, to the sum of 100*l.* and upwards, and that the said M. T. S. W., being such bankrupt as aforesaid, and being so adjudged such bankrupt as aforesaid, afterwards, to wit, on the day and year last aforesaid, within the jurisdiction of the said Central Criminal Court, to wit, in London, feloniously did remove, conceal and embezzle the said goods, chattels, bills, notes, moneys and securities for money of the value of 10*l.* and upwards, with intent to defraud the said several creditors of the said M. T. S. W.; against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

Second Count.—That heretofore and after the making, passing, and coming into operation of the said act of Parliament in the first count of this indictment recited, and before and at the time of the commission of the offence hereinafter mentioned, to wit, on the said 30th October, 1851, the said M. T. S. W. was a trader, liable to become bankrupt within the true intent and meaning of the said act, and of the laws then in force relating to bankrupts in England, and being such trader as aforesaid, had become and was justly and truly indebted to W. W. and others, his partners in trade, in a certain sum of money exceeding the amount of 50*l.*, to wit, the sum of 150*l.* and upwards, and in divers sums of money to other creditors. That the said M. T. S. W., being such trader as aforesaid, and whilst he was so indebted as aforesaid, afterwards and after the making, passing and coming into operation of the said act, and before the commission of the offence hereinafter mentioned, did commit divers acts of bankruptcy within the true intent and meaning of the said act, to wit, by departing this realm, and then remaining abroad, and by departing from his dwelling-house and otherwise absenting himself, with intent by the said acts and each of them, to defeat and delay his creditors aforesaid; whereupon, and afterwards, to wit, on the said 30th day of October, in the year of our Lord 1851, and within twelve months after the committing of the said acts of bankruptcy, the said W. W., and others his partners in trade, according to the form of the statute in such case made and provided, did present their petition, setting forth the premises, to the said Court of Bankruptcy in London, then and there being the district in which the said M. T. S. W. had resided and carried on business for six months next immediately preceding the said time of filing the said petition, and by the said petition did pray that the said M. T. S. W. might be adjudged bankrupt. That the said W. W. and others having failed to proceed and obtain adjudication of bankruptcy against the said M. T. S. W. within three days after the filing of the said petition, W. H. H., and others his partners in trade, afterwards, to wit, on the 4th day of November, in the year of our Lord 1851, then being other creditors of the said M. T. S. W., did apply to the said Court of Bankruptcy for adjudication of bankruptcy against the said M. T. S. W. upon the said petition, and did give proof to the said Court of Bankruptcy of the said M. T. S. W., then and at the time of divers acts of

Precedents.

No. CXII.
Indictment
under Bankrupt
Law Consolidation
Act against
bankrupt for
concealing
property.

Precedents.
 No. CXII.
 Indictment
 under Bankrupt
 Law Consolida-
 tion Act against
 bankrupt for
 concealing
 property.

bankruptcy theretofore committed by the said M. T. S. W., being indebted to them the said W. H. H. and others, to the amount of 50*l.* and upwards, and also proof of the trading and acts of bankruptcy of the said M. T. S. W. according to the requisites of the statute in that behalf; that such proceedings were thereupon had and taken upon the said petition in the said Court of Bankruptcy that afterwards, to wit, on the 6th day of November, 1851, the said M. T. S. W. became, and was by the said court duly declared and adjudged bankrupt, and as well before as after the said adjudication was possessed of divers goods, chattels, moneys and personal estate, to wit, 500 yards of calico, 500 yards of linen, 500 yards of woollen cloth, 500 yards of printed calico, divers large quantities of hosiery goods, and divers bills of exchange, promissory notes, securities for the payment of money, and divers moneys amounting altogether to a large amount in value, to wit, to the sum of 100*l.* and upwards; and that the said M. T. S. W. being such bankrupt as aforesaid, and being so adjudged such bankrupt as aforesaid, afterwards, to wit, on the day and year last aforesaid, within the jurisdiction of the said Central Criminal Court, to wit, in London, feloniously did remove, conceal and embezzle the said goods, chattels, bills, notes, moneys and securities for money, to the value of 10*l.* and upwards, with intent to defraud the said several creditors of the said M. T. S. W.; against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

Third Count.—That heretofore and after the making, passing and coming into operation of the said act of Parliament in the first count of this indictment recited, and before and at the time of the felonious omission and commission of the offence hereinafter mentioned, to wit, on the 6th day of November, 1851, the said M. T. S. W. was adjudged bankrupt; that the said M. T. S. W., being such bankrupt as aforesaid, and being so adjudged bankrupt as aforesaid, as well before as after the said adjudication, was possessed of divers goods, chattels, moneys and personal estate, to wit, 500 yards of calico, 500 yards of linen, 500 yards of woollen cloth, 500 yards of printed calico, divers large quantities of hosiery goods, divers bills of exchange, promissory notes, securities for the payment of money, and divers moneys amounting altogether to a large amount in value, to wit, to the sum of 100*l.* and upwards; and that the said M. T. S. W., being such bankrupt as aforesaid, and being so adjudged such bankrupt as aforesaid, afterwards, to wit, on the day and year last aforesaid, within the jurisdiction of the said Central Criminal Court, to wit, in London, feloniously did remove, conceal and embezzle the said goods, chattels, bills, notes, moneys and securities for money to the value of 10*l.* and upwards, with intent to defraud the said several creditors of the said M. T. S. W.; against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

No. CXIII.

Indictment for Dog Stealing under 8 & 9 Vict. c. 47, s. 2.

MIDDLESEX, } The jurors for our Lady the Queen upon their
to wit. } oath present, that heretofore and after the
making, passing, and coming into operation, of a certain Act of Par-
liament made and passed in a certain session of Parliament holden in the
8th and 9th years of the reign of her present Majesty Queen Victoria,
intituled *An Act for the further Prevention of the Offence of Dog
Stealing*, to wit, on the 8th day of August, A.D. 1850, at the Police
Court, Marlborough-street, in the county of Middlesex, and within the
Metropolitan Police District, W. A. was in due form of law convicted
before P. B. Esq., then and there being one of the magistrates of the
police courts of the metropolis, sitting in open court at the police court
aforesaid, of having on the 5th day of August, A.D. 1850, in the parish of
Saint Marylebone, in the said county of Middlesex, and within the said
district, unlawfully stolen, taken, and carried away, one dog, the property
of J. W., contrary to the statute in that case made and provided,
and was thereupon adjudged for the said offence to be committed to
the House of Correction at Cold Bath-fields in the said county and dis-
trict, there to be imprisoned and kept to hard labour for the term of six
months, as in and by the record of the said conviction reference being
thereunto had, will fully and at large appear. And the jurors aforesaid,
upon their oath aforesaid, do further present, that the said W. A. late of
the parish of Saint Marylebone aforesaid, labourer, having been so con-
victed, afterwards and after such conviction, to wit, on the 30th day of
April, A.D. 1853, at the parish aforesaid, in the county aforesaid, unlaw-
fully did steal, take, and carry away, from one E. H. a certain other dog
of the value of 2*l.*, then and there being the property of the said E. H.;
against the form of the statute in such case made and provided, and against
the peace, of our said Lady the Queen, her crown and dignity.

No. CXIV.

Indictment for Stealing a quantity of Base Coin.

TOWN and County of the Town of Southampton, } The jurors for
to wit. } our Lady the
Queen upon their oath present, that heretofore, to wit, on the 6th day of
February, A.D. 1851, J. E., late of the parish of _____, in the town and
county of the town of Southampton, labourer, was servant to the South-
ampton Dock Company, and that he the said J. E., whilst he was such
servant, to wit, on the day and year aforesaid, with force and arms at the
parish aforesaid, in the town and county aforesaid, one packing case of
the value of 1*s.*; one wrapper of the value of 1*s.*; 140 pieces of white
metal of the value of 4*l.*; sixteen pieces of copper of the value of 6*d.*;

Precedents.
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No. CXIV.
Indictment for
stealing base
coin.

twelve pieces of metal, to wit, lead, of the value of 2*d.* ; twelve pieces of other metal, to wit, zinc, of the value of 2*d.* ; 314 pieces of metal called false dollars, of the value of 20*l.* ; fifty pieces of metal then and there respectively stamped with a certain impression, so as to resemble and pass for fifty pieces of foreign coin called dollars, of the value of 2*l.* ; two pieces of metal then and there respectively stamped with a certain impression, so as to resemble and pass for two pieces of foreign coin called thirty sols pieces, of the value of 1*d.* ; fifty pieces of metal then and there respectively stamped with a certain impression so as to resemble and pass for fifty pieces of foreign coin called half-dollars, of the value of 5*s.* ; fifty pieces of metal then and there respectively stamped with a certain impression so as to resemble and pass for fifty pieces of foreign coin called quarter-dollars, of the value of 4*s.* ; fifty pieces of metal then and there respectively stamped with a certain impression so as to resemble and pass for fifty pieces of foreign coin called reals, of the value of 3*s.*, then and there respectively being in the possession and power of the said Southampton Dock Company, to whom the said J. E. was then and there servant as aforesaid, then and there feloniously did steal, take, and carry away from a certain wharf there adjacent to a certain port of entry and discharge, to wit, the port of Southampton, against the peace of our said Lady the Queen, her crown and dignity.

Second count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that heretofore, to wit, on the said 6th day of February, A.D., 1851, the said J. E. was servant to the said Southampton Dock Company, and that he the said J. E. whilst he was such servant, to wit, on the day and year aforesaid, at the parish aforesaid, in the town and county aforesaid ; twenty pounds weight of metal of the value of 5*l.* ; one packing case of the value of 1*s.* ; and one wrapper of the value of 1*s.*, then and there being in the possession and power of the said Southampton Dock Company, to whom the said J. E. was then and there such servant as aforesaid, then and there feloniously did steal, take, and carry away, against the peace of our said Lady the Queen, her crown and dignity.

No. CXV.

Indictment against a Defendant for Obtaining Money by falsely pretending that he had Authority from a Creditor to receive a Sum of Money from a Debtor —with Counts for soliciting the Debtor to conspire with him falsely to pretend to the Creditor that the Debt had been discharged.

CENTRAL Criminal Court, { The jurors for our Lady the Queen upon
to wit. } their oaths present, that heretofore, and at the time of the committing of the offence hereafter in the 1st, 2nd, 3rd, 4th, and 5th counts of this indictment respectively mentioned, T. F. W. was indebted to G. B. and others, his partners in trade, in a certain sum of money for a just and lawful debt, to wit, to the amount of 75*l.* and upwards ; and that H. T., late of the parish of South Mimms, i

the county of Middlesex, labourer, well knowing the premises, on the 1st day of April, A.D. 1853, at the parish of South Mimms aforesaid, in the county of Middlesex aforesaid, and within the jurisdiction of the said Central Criminal Court, unlawfully, knowingly, and designedly, did falsely pretend to the said T. F. W., that he the said H. T., then had full and lawful power and authority to compromise the said debt, and to accept and receive a sum of money less in amount than the said debt, in lieu and in satisfaction thereof, and to discharge the said T. F. W. from the same; by means of which said false pretences, he the said H. T. did then and there, unlawfully, knowingly, and designedly, fraudulently obtain of and from the said T. F. W., divers of the moneys of the said T. F. W., to wit, to the amount of 20*l.*, and one piece of paper, of the value of 1*d.*, of the goods and chattels of the said T. F. W., with intent then and there to cheat and defraud of the same money, goods and chattels; whereas in truth and in fact the said H. T. had not then any lawful power or authority to compromise the said debt, nor to accept or receive any money whatever in lieu or in satisfaction thereof, nor to discharge the said T. F. W. from the same, as the said H. T. so falsely pretended as aforesaid; against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

Precedents.

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No. CXV.
Indictment for
obtaining money
by false
pretences.

Second Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said H. T., well knowing the premises in the first count of this indictment mentioned, heretofore, to wit, on the day and year aforesaid, at the parish aforesaid, in the county aforesaid, and within the jurisdiction of the said Central Criminal Court, unlawfully, knowingly, and designedly, did falsely pretend to the said T. F. W., that he the said H. T. then had full and lawful power and authority to receive the said debt so due to the said G. B. and others, and to give a receipt and discharge for the same; by means of which said false pretences, he the said H. T., did then and there unlawfully, knowingly, and designedly, fraudulently obtain of and from the said T. F. W., divers of the moneys of the said T. F. W., to wit, to the amount of 20*l.*, and one piece of paper, of the value of 1*d.*, of the goods and chattels of the said T. F. W., with intent, then and there, to cheat and defraud of the same moneys, goods and chattels; whereas in truth and in fact the said H. T. had not then any power or authority whatever to receive the said debt due to the said G. B. and others, or to give a receipt or discharge for the said debt, as the said H. T. so falsely pretended as aforesaid; against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

Third Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said H. T., well knowing the premises in the first count of this indictment mentioned, heretofore to wit, on the 28th day of March, in the year of our Lord 1853, at the parish aforesaid, in the county aforesaid, and within the jurisdiction of the said Central Criminal Court, unlawfully, knowingly and designedly, did falsely pretend to the said T. F. W. that he the said H. T. then was the agent of the said G. B. and others, and as such agent, then had full and lawful power and authority to receive the said debt so due to the said G. B. and others, as in the first count of this indictment mentioned, and to give a receipt and discharge for the same, with intent, then and there, and by means of the said last mentioned false pretences, fraudulently to obtain of and from the said T. F. W. divers of the moneys of the said

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No. CXV.
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obtaining money
by false
pretences.

T. F. W., to wit, as and for and by way of payment and in discharge and satisfaction of the said debt, and to cheat and defraud the said T. F. W. of the said moneys ; whereas in truth and in fact the said H. T. was not then the agent of the said G. B. and others ; and whereas in truth and in fact the said H. T. had not then any power or authority whatever to receive the said debt, or to give any receipt or discharge for the same. And so the jurors aforesaid, upon their oath aforesaid, do say that the said H. T., on the day and year aforesaid, at the parish aforesaid, in the county aforesaid, and within the jurisdiction of the said Central Criminal Court, by the false pretences in this count aforesaid, unlawfully, knowingly, and designedly, and in contempt of the statute in that behalf, did attempt and endeavour to obtain from the said T. F. W. his moneys aforesaid, and to cheat and defraud him of the same ; in contempt of our said Lady the Queen, and her laws, and against the peace of our said Lady the Queen, her crown and dignity.

Fourth Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said H. T., afterwards, and whilst the said debt was lawfully and justly due from the said T. F. W. to the said G. B. and others, to wit, on the 1st day of April, A.D. 1853, at the parish aforesaid, in the county aforesaid, and within the jurisdiction of the said Central Criminal Court unlawfully and wilfully did solicit and endeavour to persuade the said T. F. W. to concur and join with him, the said H. T., in a certain unlawful and fraudulent conspiracy, combination, confederacy, and agreement to impoverish the said G. B. and others, and to defraud the said G. B. and others of the said debt, to wit, by fabricating and putting in use, and by maintaining and upholding as true and genuine, certain fraudulent writings, whereby it should be made falsely to appear that the said debt had been discharged by payment ; in contempt of our said Lady the Queen, and her laws, and against the peace of our said Lady the Queen, her crown and dignity.

Fifth Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said H. T., afterwards, and whilst the said debt was lawfully and justly due from the said T. F. W. to the said G. B. and others, to wit, on the 1st day of April, A.D. 1853, at the parish aforesaid, in the county aforesaid, and within the jurisdiction of the said Central Criminal Court, unlawfully and wilfully did solicit and endeavour to persuade the said T. F. W. to concur and join with him the said H. T. in a certain unlawful conspiracy, combination, confederacy and agreement, by divers unlawful and deceitful, wilful, and fraudulent ways, devices, stratagems, and means to be determined upon and contrived by and between them, unjustly to avoid and excuse the payment of the said debt, and to hinder, impede, delay, and altogether defeat and prevent the said G. B. and others, in and from lawfully recovering the same, and thereby to impoverish the said G. B. and others ; in contempt of our said Lady the Queen, and her laws, and against the peace of our said Lady the Queen, her crown and dignity.

Sixth Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that heretofore and before the commission of the offence hereinafter mentioned, the said H. T. had been the agent and servant of the said G. B. and others, with authority to collect debts due to the said G. B. and others, and to give receipts and acquittances for the same, which said authority, at the time of the committing of the offence hereinafter next mentioned was, and from thence hitherto had been altogether, annulled and made void ; and the jurors aforesaid, upon

their oath aforesaid, do further present, that heretofore and at the time of committing of the offence hereinafter mentioned, the said T. F. W. was indebted to the said G. B. and others, in a certain sum of money for a just and lawful debt, to wit, to the amount of 75*l.* and upwards; and the jurors aforesaid, upon their oath aforesaid, do further present that the said H. T., heretofore, to wit, on the 1st day of April, A.D. 1853, and whilst the said T. F. W. was so indebted as aforesaid, at the parish aforesaid, in the county aforesaid, and within the jurisdiction of the said Central Criminal Court, unlawfully and wilfully did solicit and endeavour to persuade the said T. F. W. to concur and join with him the said H. T. in a certain unlawful and fraudulent conspiracy, combination, confederacy, and agreement, in manner and to the effect following, that is to say, that he the said H. T., for reward to him in that behalf, should give to the said T. F. W., and that the said T. F. W. in fraudulent collusion with the said H. T., should receive from him divers writings so to be made and fabricated as to purport to be receipts given by him the said H. T. to the said T. F. W. evidencing and acknowledging the payment of money by him the said T. F. W. to the said H. T., for and on behalf of the said G. B. and others, to the intent, that afterwards and whilst the said debt should remain due and owing from the said H. T. to the said G. B. and others, the said writings should be maintained and upheld by him the said T. F. W., in fraudulent collusion with the said H. T., as receipts, vouchers, and acquittances, *bonâ fide* received by him the said T. F. W., from the said H. T., as the agent of the said G. W. and others, in that behalf, and without any fraudulent collusion whatever with the said H. T., evidencing and acknowledging the payment and discharge of the said debt, and thereby to excuse and avoid payment of the same debt to the said G. B. and others; and to hinder, delay, impede, and altogether defeat and prevent the said G. B. and others from lawfully recovering the said debt, and thereby to impoverish the said G. B. and others; in contempt of our said Lady the Queen, and her laws, and against the peace of our said Lady the Queen, her crown and dignity.

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obtaining money
by false
pretences.

No. CXVI.

Indictment for Perjury, committed before a Judge of a provincial County Court, on an application by the Defendant to be discharged from a certain prison, where he was in custody under an order of the High Court of Chancery, for a Contempt of that Court.

ESSSEX, } The jurors for our Lady the Queen upon their oath to wit, } present, that heretofore and after the making and passing and coming into operation of a certain act of Parliament made and passed in a certain session of Parliament holden in the first and second years of the reign of her present Majesty Queen Victoria, intituled, *An Act for abolishing Arrest on mesne process in Civil Actions,*

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except in certain cases for extending the remedies of Creditors against the property of Debtors and for amending the laws for the Relief of Insolvent Debtors in England, and also of a certain other act of Parliament, made and passed in a certain other session of Parliament holden in the ninth and tenth years of the reign of her present Majesty Queen Victoria, intituled *An Act for the more easy Recovery of Small Debts and Demands in England,* and also of a certain other act of Parliament, made and passed in a certain other session of Parliament holden in the tenth and eleventh years of the reign of her present Majesty Queen Victoria, intituled *An Act to Abolish the Court of Review in Bankruptcy, and to make Alterations in the Jurisdiction of the Courts of Bankruptcy and Court for the Relief of Insolvent Debtors,* and after the fifteenth day of September, in the year of our Lord one thousand eight hundred and forty-seven, to wit, on the twelfth day of February, in the year of our Lord one thousand eight hundred and fifty-two, S. T., late of Chelmsford, in the county of Essex, gentleman, was in actual custody within the walls of a certain prison in England, to wit, at Springfield, in the said county, upon certain process issued out of the High Court of Chancery at the suit of S. C. jointly with other persons, for and by reason of his contempt of her said Majesty's High Court of Chancery, for and by reason of the nonpayment of money ordered to be paid by the said High Court of Chancery; and that the said S. T. so being within the walls of the said prison as aforesaid, afterwards, to wit, on the day and year aforesaid, did apply, by petition, in a summary way, to the Court for the Relief of Insolvent Debtors in England for his discharge from such custody, according to the provisions of the said act firstly above recited, which said petition the said last-mentioned court then and there thought it reasonable to permit and did permit. And the jurors aforesaid, upon their oath aforesaid, do further present that after diuers proceedings had and taken in the matter of the said petition, and after due order made by the said Court for the Relief of Insolvent Debtors for vesting the estate of the said S. T. in the provisional assignee for the time being of the said court, and the said S. T. within such time after the making of the said vesting order, as the said court thought reasonable, to wit, on the first day of March, in the year of our Lord one thousand eight hundred and fifty-two, according to the provisions of the said firstly recited act, did deliver into the said Court for the Relief of Insolvent Debtors the schedule of him the said S. T. in the form required by the said act, purporting to be the schedule of the said S. T., and whereby he then and there declared that the same then and there contained a full and fair description of him the said S. T. as to his name or names, trade or trades, profession or professions, together with his last usual place of abode, and the place or places where he had resided during the time when his debts were contracted; and also a full and true description of all debts due or growing due from him at the time of making the said order vesting his estate and effects in the said provisional assignee, and of all and every person and persons to whom he was indebted, or who to his knowledge or belief claimed to be his creditors, together with the nature and amount of such debts and claims respectively, distinguishing such as were admitted from such as were disputed by him the said S. T., and also a full, true, and perfect account of all his estate and effects, real and personal, in possession, reversion, remainder, or expectancy; and also of all places of benefit or advantage held by him, whether the emoluments of the same arose from fixed salaries or

from fees or otherwise ; and also of all pensions or allowances which he then had in possession or reversion, or which were then held by any other person or persons for him or on his behalf, or of and from which he then derived or might derive any manner of benefit or advantage ; and also of all rights and powers of any nature and kind whatsoever which he then was, or any other person or persons in trust for him or for his use, benefit, or advantage, were in any manner seized or possessed of, or interested in, or entitled unto, or which he or any other person or persons in trust for him or for his benefit had any power to dispose of, charge, or exercise for his benefit or advantage, together with a full, true, and perfect account of all the debts due or growing due at the time of making the said vesting order to him, or to any person or persons in trust for him, or for his benefit or advantage, either solely or jointly with any other person or persons, and the names and places of abode of the several persons from whom such debts were then due or growing due, and of the witnesses who could prove such debts as far as he the said S. T. could set forth the same. And that the said schedule also contained a balance sheet of so much of the receipts and expenditure of the said S. T., and of the items composing the same, as was required by the said Court for the Relief of Insolvent Debtors in that behalf, and did fully and truly describe the wearing apparel, bedding, and other such necessities of himself and family, and of his working tools and implements which were excepted by him from the operation of the act of Parliament, firstly, above recited, together with the value of such excepted articles respectively.

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And the jurors aforesaid, upon their oath aforesaid, do further present that thereupon, to wit, on the tenth day of March, in the year of our Lord one thousand eight hundred and fifty-two, the said Court for the Relief of Insolvent Debtors, under and by virtue of the said act thirdly above recited, did make its order referring the said petition for hearing to the Chelmsford District Court of the county of Essex, he the said S. T. then and there being in custody within the walls of the said prison within the said district, and did transmit the said petition and the said schedule to such last-mentioned court for hearing accordingly ; whereupon W. G., Esq., then and there being the judge of the said court of the county aforesaid, did forthwith name a time and place for the said S. T. to be brought up before him the said W. G. as such judge as aforesaid there to be dealt with according to law, that is to say, for the purpose last aforesaid did appoint the twenty-seventh day of March, in the year of our Lord one thousand eight hundred and fifty-two, at the Shire-Hall, at Chelmsford aforesaid, the said last-mentioned day not being more than four calendar months after the date of such notice, of the making of which said vesting order as aforesaid, and of the said filing of the said schedule, and of the said time and place so appointed for the said S. T. to be brought up as aforesaid, the said W. G., as such judge as aforesaid, did then and there cause to be given to the said S. C., and others the creditors of the said S. T., at whose suit the said S. T. was then still detained in custody in the said prison, and also to the other creditors of the said S. T. named in the said schedule resident within the United Kingdom, whose debts amounted to the sum of five pounds, and also to be inserted in the *London Gazette*.

And the jurors aforesaid, upon their oath aforesaid, do further present that afterwards, to wit, on the said twenty-seventh day of March, in the year of our Lord one thousand eight hundred and fifty-two, at Chelmsford aforesaid, in the said county, the said S. T. being such

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prisoner as aforesaid, in pursuance of the said appointment, and under and by virtue of the said statute thirdly above recited, was brought up before the said W. G., then being judge of the said court of the county aforesaid, the same court then and there being a court duly constituted, appointed, and holden under and in pursuance of the said statute secondly above recited, there to be examined touching and concerning his said schedule, and divers other matters and things according to law, at which time and place the said S. C. then and there being a creditor of the said S. T., did appear to examine and oppose the discharge of the said S. T. in pursuance of notice theretofore duly given by him the said S. C. to the said S. T. in that behalf, and then and there did oppose the discharge of the said S. T. from such custody as aforesaid.

And the jurors aforesaid, upon their oath aforesaid, do further present, that before and at the time of the filing of the said petition the said S. T. had as executor of the last will and testament of A. M., late of Weeley, in the said county of Essex, farmer, deceased, received into the hands of the said S. T. a cheque for payment of one thousand six hundred pounds, which said sum of one thousand six hundred pounds was then due and formed part of the estate of the said A. M. deceased, and which said sum of money, at the time of the filing of the said petition, and at the time of the commission of the offence hereinafter mentioned, remained to be accounted for by the said S. T. to the persons beneficially entitled thereto.

And the jurors aforesaid, upon their oath aforesaid, do further present that at the time of the commission of the offence hereinafter mentioned, there was contained in the said schedule a certain entry and statement of and concerning the said sum of one thousand six hundred pounds, by which the said S. T. alleged, declared, and made it to appear in substance and to the effect following, that is to say, that on the twenty-third of October one thousand eight hundred and forty-nine, the said A. M. died leaving a will under which the said S. T. and the said S. C. were appointed executors, that he the said S. T. and S. C. proved the said will, and that the property of the said A. M. deceased, had been sworn under eight thousand pounds; that the said S. C. and S. T. both acted under the said will; that he the said S. T. had been the professional adviser of the said A. M. for many years previous to his death, through the said S. C.'s introduction; that among the moneys due to the deceased's estate was the said sum of one thousand six hundred pounds from one J. N., of Lamarsh, Essex, farmer, a client of the said S. T.; that a few weeks after the said A. M.'s death the said J. N. had called upon the said S. T. to know when he the said J. N. would be required to pay the said sum of one thousand six hundred pounds; that he the said S. T. replied within twelve months after the said A. M.'s death; that shortly after this the said J. N. again called, stating he had a friend who would advance the said sum of one thousand six hundred pounds about Christmas, at the same time requesting the said S. T. to communicate with one R. B., a solicitor of Chelmsford aforesaid, a brother of his the said J. N.'s said friend; that the said trust account under the said A. M.'s estate was continued with the same bank as the testator used in his life time, and the said S. C. used, namely, that of Messrs. Round and Co. of Colchester, they also being clients of him the said S. T.; that about a fortnight before Christmas, in the year of our Lord 1849, being at his the said S. T.'s bankers, Messrs. M. B. E. and Co., and his account being then overdrawn about 700*l.*, though the firm and one G. H. E. one of

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the firm, were indebted to the said S. T. for professional business and money advanced, about one thousand six hundred and ninety-six pounds, he the said S. T. requested the said G. H. E. to place to the credit of the banking account of the said S. T., out of the debt due to him the said S. T., a sum of one thousand pounds; that this was agreed to be done, he the said G. H. E. asking the said S. T. when he wanted it, to which he the said S. T. replied, before the end of the year. That at this interview the said G. H. E. intimated to the said S. T. his knowledge of the executorship aforesaid, under the said A. M.'s estate, and also his knowledge of the fact that the said J. N. was about to pay off the said mortgage; also that the trust account was kept at Messrs. R.'s bank, and most strenuously urged the said S. T. to remove the trust account to his bank, in order that they might have the use of the trust moneys till it was necessary to invest them; that he the said S. T. positively refused to do this, as all the parties concerned were clients; that a few days after this interview, Mr. B., jun., one of the other partners, urged him the said S. T. to the same effect, when he declined. That on the afternoon of Christmas-day, in the year of our Lord one thousand eight hundred and forty-nine, he the said S. T. met with a serious accident at Lexden, in consequence of which his life was in jeopardy for a considerable time, being confined to his room, and unable to attend his business for seventeen days. That on the 28th day of December the said R. B. wrote to him the said S. T. appointing the first day of January, in the year of our Lord one thousand eight hundred and fifty, for the said J. N. to attend with him and pay up the said mortgage-money, one thousand six hundred pounds, and receive the deeds. That the said S. T. was quite unable to attend to his business, and that his wife wrote to the said S. C., the co-executor of the said S. T., on the twenty-ninth day of December, in the year of our Lord one thousand eight hundred and forty-nine, telling him of the said R. B.'s appointment, arranging for the servant of the said S. T. to wait on the said S. C. at his house on the first day of January, in the year of our Lord one thousand eight hundred and fifty, on which day the servant of the said S. T. took the testator's box containing the deeds of this and other mortgages, of which the said S. C. had the key, to him, and he sent the servant back to the house of the said S. T. at Lexden with the said J. N.'s deeds. That the said R. B. and J. N. attended according to appointment, paid the said sum of one thousand six hundred pounds, by cheque on Messrs. S.'s bank at Braintree, and received the deeds; that he the said S. T. then directed his wife to send the cheque to the said bank of Messrs. R. and Co., but that she, misunderstanding the directions of the said S. T., sent the servant with the cheque to the said bank of Messrs. M. B. E. and Co., instead of the said bank of Messrs. R. and Co., where the said trust account of the said A. M., deceased, was kept. That, on coming down stairs on the eleventh day of January in the year of our Lord one thousand eight hundred and fifty, he the said S. T. discovered this, and immediately wrote to the said G. H. E. to see him the said S. T. on the subject. That the said G. H. E. came to see him the said S. T. within one hour, and that he the said S. T. requested him instantly to send the said sum of one thousand six hundred pounds to the said bank of Messrs. R., telling him the money did not belong to him the said S. T., but to the estate of the said A. M. deceased, of which fact the said G. H. E. admitted he was aware; that the said G. H. E. left him the said S. T. with the promise this should be done; that on the return of the said S. T. to his office at Colchester, on

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the thirty-first day of January, in the year of our Lord one thousand eight hundred and fifty, he the said S. T. found the said firm of M. B. E. and Co. had not credited the account of him the said S. T. with the said sum of one thousand pounds, nor had they returned the said sum of one thousand six hundred pounds to the said bank of Messrs. R. and Co.; that in consequence of this, he the said S. T. immediately made an equitable mortgage of his Hill Farm, Feering, Essex, to the said S. C. the co-executor of the said S. T., to secure the said sum of one thousand six hundred pounds, with interest at four pounds per centum per annum, as paid by the said J. N. That he the said S. T. made many applications up to the first day of July in the year of our Lord one thousand eight hundred and fifty to the said firm of M. B. E. and Co., on the subject of the said sum of one thousand six hundred pounds, they always promising to do what he the said S. T. required in order to prevent him proceeding against them for the recovery of the money; that on the first day of July he the said S. T. found that Mr. J. S. B., the solicitor to the said bank of Messrs. M. B. E. and Co., had been advising the said S. C. to file a bill in Chancery against him the said S. T. for the restitution of the said sum of one thousand six hundred pounds, telling the said S. C., that if he the said S. C. did not do so, he would have to pay the money himself, and that the said firm of Messrs. M. B. E. and Co. did not know the said sum of one thousand six hundred pounds was trust money; that the said S. C. informed him the said S. T. of this; that the said Mr. B. at that time was not the professional adviser of the said S. C., but he prevailed on him to let him take proceedings in Chancery against him the said S. T., which he immediately did; that an order for the said S. T. to pay the sum of one thousand six hundred pounds into court, or deposit security for the same was the result. That before the said S. T. could get matters arranged to sell the Feering Farm aforesaid, to pay the said sum of one thousand six hundred pounds, he the said S. T. was arrested for the amount, and his property sequestered, although he was then under a contract to sell the property to a Mr. G. for more than sufficient to pay the said sum of one thousand six hundred pounds, and all charges, of which the said Mr. B. was aware, and that he the said S. T. had then been in custody since the eleventh day of November in the year of our Lord one thousand eight hundred and fifty.

And the jurors aforesaid, upon their oath aforesaid, do further present that before and at the time of the commission of the offence hereinafter mentioned, and before and at the time of the filing of the said petition, there was due from, and remained to be accounted for, by the said S. T. to the estate of the said A. M., deceased, the sum of one thousand eight hundred pounds, for and in respect of moneys secured to the said A. M. in his lifetime by the said S. T. upon an equitable mortgage by him of a certain estate called Hill House, Lexden, in the said county of Essex.

And the jurors aforesaid, upon their oath aforesaid, do further present that at the time of the commission of the offence hereinafter mentioned there was contained in the said schedule a certain entry and statement of and concerning the said sum of one thousand eight hundred pounds, by which the said S. T. alleged, declared, and made it to appear in substance and to the effect following, that is to say, that in the year of our Lord one thousand eight hundred and forty-five, and up to February in the year of our Lord one thousand eight hundred and forty-six, the said S. T. had moneys in hand belonging to the said A. M., for which from time to time he the said S. T. had given the said A. M. notes of hand

and memorandums amounting to one thousand eight hundred pounds ; that on the seventh day of February, in the year of our Lord one thousand eight hundred and forty-six, the said S. T. proposed to the said A. M. to give him an equitable mortgage of an estate of the said S. T. at Hill House, Lexden ; that the said A. M. did not consider this necessary, but subsequently consented to receive the mortgage as security for the one thousand eight hundred pounds aforesaid, which was executed by agreement of the seventh day of February, in the year of our Lord one thousand eight hundred and forty-six, and that he the said S. T. then locked up the agreement and deeds in the box of the said S. T. at his office ; that the said S. T. was afterwards engaged for the said A. M. up to Michaelmas in the year of our Lord one thousand eight hundred and forty-six, in lending out various sums amounting to one thousand nine hundred pounds ; that on the second day of October, in the year of our Lord one thousand eight hundred and forty-seven, the said A. M. again called on the said A. T. with seven hundred pounds to lend out to one Mr. S. ; that the said A. M. then expressed a fear that his holding the said deeds of the Lexden property might be prejudicial to him the said S. T., and insisted on the said S. T. allowing him the said A. M. to cancel the said agreement for the equitable mortgage, and for him the said S. T. to give him a note of hand for the said one thousand eight hundred pounds, payable six months after notice ; that this was done, and the said agreement and deeds were given up to the said S. T., the said A. M. taking the said note away with him, which had an indorsement at the back signed by the said A. M. and the said S. T., to the effect that the said note was given in lieu of the said agreement for the said equitable mortgage ; that the said note was to bear interest at four pounds per centum from the fourteenth day of August, one thousand eight hundred and forty-seven ; that the said S. T. paid the interest up to February, in the year of our Lord one thousand eight hundred and fifty ; that the said A. M. died on the twenty-third day of October one thousand eight hundred and forty-nine, leaving a will by which the said S. C., and he the said S. T., were appointed executors, since which time he the said S. T. had paid the said S. C. thirty-six pounds, one half-year's interest on the said note ; that on the fourteenth day of October one thousand eight hundred and fifty the said S. T. mortgaged the property, the deeds of which the said A. M. formerly held, to the London and County Bank, Lombard Street, London, for eight hundred pounds ; that when the property of the said S. T. at Lexden and Colchester was taken possession of by the sequestrators under the Chancery suit creditors numbered One in the said schedule, and after the imprisonment of the said S. T., the same cancelled agreement given up to the said S. T. by the said A. M. was found in a private drawer of the said S. T. which the said sequestrators broke open ; on finding which the said S. C. commenced a suit in Chancery against the said London and County Bank, and the said S. T., to recover the said mortgage deeds, he alleging that at the time of the imprisonment of the said S. T. the said property at Lexden was still subject to the equitable mortgage to the said A. M., though the said S. C. well knew that it had been cancelled by the said A. M., and in addition to which he the said S. T. had then paid to the said S. C. thirty-six pounds, the half-year's interest on the said note before-mentioned, he being also aware that he the said S. T. had paid the said A. M.'s interest on the said note in his lifetime, an account of which the said S. C. brought the said S. T., and he the

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said S. T. still had a set-off against the said S. C., as executor as aforesaid, of about thirty-five pounds.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said S. T. being so brought before the said W. G. so then and there being such judge of the said court of the county of Essex aforesaid, was then and there, before the said W. G., in due manner sworn, and did take his corporal oath upon the Holy Gospel of God, to speak the truth and make true answers upon his said examination, and also to make true answer to such question, as should then and there be put to him touching the matters contained in the said schedule, and touching and concerning such other matters and things as the said W. G., as such judge as aforesaid, should think fit and proper to inquire into in order to the due execution of the laws relating to the relief of insolvent debtors in England, he the said W. G. then and there, as such judge as aforesaid, having sufficient and competent lawful power and authority to administer the said oath to the said S. T. in that behalf. And the jurors aforesaid, upon their oath aforesaid, do further present that the said S. T. being so sworn as aforesaid, then and there, to wit, on the day and year last aforesaid, in the said court of the county aforesaid, to wit, at Chelmsford, in the said county, before the said W. G., then and there being judge of the said court, was then and there examined upon the oath of him the said S. T., according to the form of the statute in such case made and provided, and of and concerning the said schedule and the several matters contained in the same, and of and concerning such other matters and things as seemed fit and proper to the said W. G. to be inquired into.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said S. T. being so sworn as aforesaid, the said W. G. did then and there, and in execution of the laws relating to insolvent debtors in England, examine into the said schedule upon the said oath of the said S. T. upon his oath aforesaid, touching and concerning the several matters contained in the said schedule; upon which said examination the said S. C., and divers other creditors of the said S. T., in pursuance of the said notice in that behalf, and by and with the permission of the said W. G. as such judge as aforesaid, and having given satisfactory proof of their right to oppose the discharge of the said S. T., did oppose the said discharge, and for the purposes aforesaid did put questions to the said S. T. touching the matters contained in the said schedule, and touching and concerning divers other matters and things, to wit, the several matters and things hereinafter alleged.

And the jurors aforesaid, upon their oath aforesaid, do further present that at and upon the said examination of the said S. T. the following questions became and were material questions touching and concerning the matters contained in the said schedule, and which the said W. G. then and there as such judge as aforesaid, was of opinion it was fit and proper should be put to the said S. T., and did in fact put and permit to be put by the said creditors to the said S. T. on his examination aforesaid, in order to the due execution of the laws relating to insolvent debtors in England, in the matter of the said petition, the following questions, that is to say, whether or not the said statement and entry contained in the said schedule of and concerning the sum of one thousand six hundred pounds was true; and whether or not the truth really was that the said S. T. had been unable to attend to the business relating to the paying off the said sum of one thousand six hundred pounds mortgage on the said first day of January, in the year of our

Lord one thousand eight hundred and fifty ; and whether or not it was the fact that the wife of the said S. T. wrote to the said S. C. on the twenty-ninth day of December, in the year of our Lord one thousand eight hundred and forty-nine, telling him of the said alleged appointment of the said R. B. and arranging for the servant of the said S. T. to wait on him the said S. C. ; and whether or not it had been the fact that the said S. T. had directed his said wife to send the said cheque for one thousand six hundred pounds to the said bank of Messrs. R. and Co. ; and whether or not the said wife of the said S. T. had, notwithstanding such directions, sent the said servant, with the said cheque, to the bank of Messrs. M. B. E. and Co. instead of the said bank of Messrs. R. and Co. ; and whether or not the fact really had been that the said S. T. had ever, and when, and whether or not on coming down stairs on the fourteenth day of January, in the year of our Lord one thousand eight hundred and fifty, discovered the said alleged mistake, and what the said S. T. had done in consequence ; and whether or not the said S. T. had written to the said G. H. E., and whether or not, immediately after such discovery, to see him the said S. T. on the subject of the said alleged mistake, and whether or not the said G. H. E. thereupon came to the said S. T., and whether or not thereupon or ever the said S. T. requested the said G. H. E. to send the amount of the said one thousand six hundred pounds cheque to the said bank of Messrs. R. and Co. or told him at the same or any time that the said money did not belong to him the said S. T. but to the estate of the said A. M. deceased ; and whether or not the said G. H. E. had been or was aware of that fact, and whether or not the said G. H. E. had left him the said S. T. with the promise that this should be done ; and whether or not, in consequence of the said Messrs. M. B. E. and Co. not having placed the sum of one thousand pounds to the credit of the said S. T. with their bank, and not having transmitted the said sum of one thousand six hundred pounds to the bank of Messrs. R. and Co. he the said S. T. immediately, or in fact ever, made an equitable mortgage of the said Hill Farm, Feering, Essex, to the said S. C. his co-trustee, to secure the said one thousand six hundred pounds, with interest at four pounds per cent. ; and whether or not it was the fact that the said S. T. had made application to the said firm of Messrs. M. B. E. and Co. on the subject of the said one thousand six hundred pounds ; and whether or not it was the fact that the said Messrs. M. B. E. and Co. had ever made any and what promise in order to prevent the said S. T. proceeding against them for the recovery of the said sum of one thousand six hundred pounds ; and whether or not it was the fact that the said S. T., in writing or otherwise, desired any person to take the said cheque to the said bank of Messrs. M. B. E. and Co., and whether or not it had been the fact that any deed charging the said Feering estate with the said sum of one thousand six hundred pounds was put into the said box by the said S. C. ; and whether or not it was the fact that the said entry and statement in the said schedule of and concerning the said sum of one thousand eight hundred pounds was true ; and whether or not it was the fact that the said S. T. had given to the said A. M. the note of hand of him the said S. T. for the said sum of one thousand eight hundred pounds, payable six months after notice ; and whether or not thereupon the said agreement and the said deeds mentioned in the said entry and statement were given up to the said S. T., and whether or not the said A. M. did in truth ever take away such alleged note, and whether it was the fact that the said alleged note

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had an indorsement at the back thereof signed by the said A. M. and the said S. T., and whether or not to the effect that the said note was given in lieu of the said agreement for the said equitable mortgage, and whether or not it was the fact that the said equitable mortgage had ceased to operate, and when and whether or not on the second day of October, in the year of our Lord one thousand eight hundred and forty-seven; and whether or not the said A. M. wished the same to be cancelled, and had in fact received or taken the said note of hand for the said sum of one thousand eight hundred pounds and interest, and whether the said equitable mortgage had in fact been cancelled, and how, and whether or not by the said A. M., and whether or not by his signing a memorandum at the back of the said note, and whether or not such note had any special indorsement, and for what purpose, and whether or not to show that the said equitable mortgage had been cancelled.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said S. T. being so sworn as aforesaid, not having the fear of God before his eyes, but devising and intending to pervert the due course of law and justice, and to deceive the said W. G. in the premises, then and there, to wit, on the said twenty-seventh day of March, in the year of our Lord one thousand eight hundred and fifty-two, before the said W. G., as such judge as aforesaid, upon the said examination, unlawfully, falsely, wilfully, knowingly, and corruptly did say, depose, swear, make answer, and give evidence touching and concerning the said schedule and the several matters therein contained, and in answer to and of and concerning the several questions and subjects of enquiry aforesaid, amongst other things, in substance and to the effect following, that is to say, that the said entry and statement contained in the said schedule of and concerning the said sum of one thousand six hundred pounds was then all true; that the truth really was that he the said S. T. was quite unable to attend to the business relating to the paying off the said sum of one thousand six hundred pounds mortgage money, on the first day of January, in the year of our Lord one thousand eight hundred and fifty, that the wife of the said S. T. did write to the said S. C. on the twenty-ninth day of December, in the year of our Lord one thousand eight hundred and forty-nine, telling him of the said appointment of the said R. B., and arranging for the servant of the said S. T. to wait on him the said S. C. That it was the fact that he the said S. T. directed his said wife to send the said cheque for one thousand six hundred pounds mentioned in the statement and entry, to the said bank of Messrs. R. and Co., but that she, misunderstanding his directions, sent the said servant with the said cheque to the bank of Messrs. M. B. E. and Co., where the trust account was kept; that the fact really was, that on coming down stairs on the fourteenth day of January, in the year of our Lord one thousand eight hundred and fifty, he the said S. T. discovered the said mistake, and immediately wrote to the said G. H. E. to see him the said S. T. on the subject thereof; that he the said G. H. E. thereupon came to him the said S. T. within one hour. That he the said S. T. thereupon requested him immediately to send the said amount of the said one thousand six hundred pounds cheque to the said bank of Messrs. R. and Co., and told him at the same time the said money did not belong to him the said S. T., but to the estate of the said A. M., of which fact he was then aware. And that he the said G. H. E., left him the said S. T., with the promise that this should be done; that in consequence of the said Messrs. M. B. E. and Co. not having placed the sum

of one thousand pounds to the credit of the said S. T. with their bank, and not having transmitted the said sum of one thousand six hundred pounds to the bank of Messrs. R. and Co., he the said S. T. immediately made an equitable mortgage of his Hill Farm, Feering, Essex, to the said S. C. and co-trustee, to secure the sum of one thousand six hundred pounds, with interest at four pounds per centum, as paid by the said J. N. to the said A. M.'s estate. That he the said S. T., made many applications to the firm of Messrs. M. B. E. and Co. on the subject of the said one thousand six hundred pounds, and that they always promised to do what the said S. T. required, in order to prevent his proceeding against them for the recovery thereof; and that he the said S. T. did not in writing or otherwise desire any body to take the said cheque to the said bank of Messrs. M. B. E. and Co., and that the said deed, charging the said Feering estate with the said sum of one thousand six hundred pounds was put into the said testator's box by the said S. C. That the said entry and statement in the said schedule of and concerning the said sum of one thousand eight hundred pounds was all true. That he the said S. T. did give to the said A. M., the note of hand of him the said S. T., for the said sum of one thousand eight hundred pounds, payable in six months after notice, and thereupon the said agreement and the said deeds mentioned in the said entry and statement were given up to the said S. T. That the said A. M. did in truth take away with him the said note, and that the same had an endorsement at the back thereof, signed by the said A. M., and the said S. T., to the effect that the said note was given in lieu of the said agreement for the said equitable mortgage, that the said equitable mortgage ceased to operate on the second day of October, in the year of our Lord one thousand eight hundred and forty-seven. That the said A. M. wished it to be cancelled, and took the said note for the said sum of one thousand eight hundred pounds and interest. That the said equitable mortgage was cancelled by the said A. M., by signing a certain memorandum at the back of the said note, which had a special indorsement to show that the said equitable mortgage had been cancelled: whereas in truth, and in fact, the said entry and statement contained in the said schedule of and concerning the said sum of one thousand six hundred pounds, at the time when the said S. T. so said, deposed, swore, and gave evidence as aforesaid, was not true. And whereas in truth and in fact, the same then was and is false and untrue in divers particulars, to wit, the particulars hereinafter in that behalf assigned and set forth. And whereas it was not nor is it the fact that the said S. T. was unable to attend to the business relating to the paying off of the said sum of one thousand six hundred pounds mortgage money on the first day of January in the year of our Lord one thousand eight hundred and fifty, as the said S. T. so said, deposed, swore, made answer, and gave evidence as aforesaid; and whereas the fact really was and is that the said S. T. was able to attend to the said business, and did in fact attend to the same, as he the said S. T. at the time he so said, deposed, swore, and gave evidence as aforesaid, well knew. And whereas it was not nor is it the fact that the wife of the said S. T. wrote to the said S. C. on the twenty-ninth day of December, in the year of our Lord one thousand eight hundred and forty-nine, telling him of any appointment whatever, and arranging for the servant of the said S. T. to wait on him the said S. T., as he the said S. T. so said, deposed, swore, made answer, and gave evidence as aforesaid, as he the said S. T., at the said time when he so said, deposed, swore, made

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answer, and gave evidence as aforesaid, well knew. And whereas it was not nor is it the fact that the said S. T. directed his said wife to send the said cheque for one thousand six hundred pounds mentioned in the said statement and entry to the said bank of the said Messrs. R. and Co., but that she, misunderstanding his direction, sent the said servant with the said cheque to the bank of Messrs. M. B. E. and Co., instead of the said bank of Messrs. R. and Co., as the said S. T. so said, deposed, swore, made answer, and gave evidence as aforesaid. And whereas it was not nor is it the fact, that on the fourteenth day of January, in the year of our Lord one thousand eight hundred and fifty, he the said S. T. discovered the said mistake, or that he the said S. T. wrote to the said G. H. E. to see him the said S. T. on the subject thereof, as the said S. T. so falsely said, deposed, swore, made answer, and gave evidence as aforesaid. And whereas in truth and in fact, the said S. T. never requested the said G. H. E. to send the amount of the said one thousand six hundred pounds cheque to the said bank of Messrs. R. and Co., and did not at the said time by him the said S. T. in that behalf alleged or ever tell the said G. H. E. that the said money did not belong to him the said S. T., or that the same belonged to the estate of the said A. M., as he the said S. T. so said, deposed, swore, made answer, and gave evidence as aforesaid. And whereas in truth and in fact, the said G. H. E. did not leave him the said S. T. with the promise that this should be done, or that the said sum of one thousand six hundred pounds cheque should be sent to the said bank of Messrs. R. and Co., as the said S. T. so said, deposed, swore, made answer, and gave evidence as aforesaid. And whereas it was not nor is it the fact that the said S. T. ever made to the said S. C., his said co-trustee as aforesaid, any equitable mortgage of the said Hill Farm, Feering, Essex, as the said S. T. so said, deposed, swore, and gave evidence as aforesaid. And whereas in truth and in fact, the said S. T. never made any application to the said firm of M. B. E. and Co. on the subject of the said one thousand six hundred pounds, nor did the said firm ever make any promise in order to prevent the said S. T. from proceeding against them for recovery thereof. And whereas in truth and in fact the said cheque was paid into the said bank of the said Messrs. M. B. E. and Co., by the express desire of the said S. T. And whereas in truth and in fact, the said S. T. did, by a certain writing signed by the said S. T., desire a certain person, to wit, to the jurors aforesaid as yet unknown, to take the said cheque to the said bank of Messrs. M. B. E. and Co., to wit, on the said first day of January, in the year of our Lord one thousand eight hundred and fifty. And whereas in truth and in fact, the said alleged deed, charging the said Feering estate with the said sum of one thousand six hundred pounds was not put into the said testator's box by the said S. C., as the said S. T. so said, &c. as aforesaid, And whereas in truth and in fact, the said entry and statement contained in the said schedule of and concerning the said sum of one thousand eight hundred pounds at the time when the said S. T. so said, deposed, swore, and gave evidence as aforesaid, was not true, and whereas the same then was and is false and untrue in divers particulars, to wit, in the particulars hereinafter in that behalf alleged. And whereas in truth and in fact, the said S. T. never gave to the said A. M. the note of hand of him the said S. T. for the said sum of one thousand eight hundred pounds, nor was it nor is it the fact that thereupon the said agreement, and the other deeds mentioned in the said schedule entry and statement were given up to the said S. T., as he so

said, &c. as aforesaid; and whereas in truth and in fact, the said A. M. never took away with him the said note, nor had the same alleged note any endorsement at the back thereof, signed by the said A. M. and the said S. T., to the effect that the said note was given in lieu of any agreement for the said equitable mortgage, as the said S. T. so said, &c., as aforesaid. And whereas it was not nor is it the fact, that the said equitable mortgage ceased to operate on the second day of October in the year of our Lord one thousand eight hundred and forty-seven, or had ceased to operate, as the said S. T. so said, deposed, swore, and gave evidence as aforesaid. And, whereas in truth and in fact, the said A. M. did not wish the said equitable mortgage to be cancelled, as the said S. T. so said, &c., as aforesaid. And whereas in truth and in fact the said A. M. never took the said note of hand for the said sum of one thousand eight hundred pounds and interest. And whereas in truth and in fact the said equitable mortgage was never cancelled by the said A. M. in any manner whatsoever. And whereas in truth and in fact the said alleged note never had any special endorsement to show that the security creating the said equitable mortgage had been cancelled. And whereas the truth really was and is that the said alleged note never had any existence whatever, but was so falsely sworn and alleged to have been given as aforesaid, for the purpose of fraud and deceit, and to mislead the said W. G. as such judge as aforesaid in the premises, and for no other purpose.

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And so the jurors aforesaid, upon their oath aforesaid, do say that he the said S. T., on the said twenty-seventh day of March, in the year of our Lord one thousand eight hundred and fifty-two, in the said court of the county aforesaid, at Chelmsford aforesaid, in the county aforesaid, on his oath aforesaid, before the said W. G., then being such judge as aforesaid, and then and there having sufficient and competent power and authority to take the examination aforesaid, and to administer the said oath to the said S. T. in that behalf upon the said examination of him the said S. T. unlawfully, knowingly, falsely, wilfully, and corruptly did forswear himself, give false evidence and commit wilful and corrupt perjury in manner aforesaid; against the form of the statute and statutes in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

Second Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that heretofore, and after the making, passing, and coming into operation of the several acts of Parliament in the first count of this indictment mentioned, and after the fifteenth day of September, in the year of our Lord one thousand eight hundred and forty-seven, to wit, on the twelfth day of February, in the year of our Lord one thousand eight hundred and fifty-two, the said S. T. was in actual custody within the walls of a certain prison in England, to wit, at Springfield, in the county of Essex, that is to say, upon certain process issued out of the High Court of Chancery, at the suit of S. C. and other persons, for and by reason of his contempt of Her Majesty's High Court of Chancery, for and by reason of the nonpayment of money ordered to be paid by the said High Court of Chancery; and that the said S. T. so being within the walls of the said prison as aforesaid, to wit, on the day and year aforesaid, did apply by petition in a summary way to the Court for the Relief of Insolvent Debtors in England for his discharge from such custody, according to the provisions of the said act firstly above recited, which said petition the said court then and there thought it reasonable to permit and did permit.

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And the jurors aforesaid, upon their oath aforesaid, do further present that afterwards, and after divers proceedings had and taken in the matter of the said petition, and after due order made by the said Court for the Relief of Insolvent Debtors for vesting the estate of the said S. T. in the provisional assignee of the said court for the time being, the said S. T. within such time after the making of the said vesting order as the said court thought reasonable, to wit, on the first day of March, in the year of our Lord one thousand eight hundred and fifty-two, according to the provisions of the said first-mentioned act, did deliver unto the said court the schedule of him the said S. T., according to the form required by the said act.

And the jurors aforesaid, upon their oath aforesaid, do further present that thereupon and afterwards, to wit, on the tenth day of March, in the year of our Lord one thousand eight hundred and fifty-two, the said Court for the Relief of Insolvent Debtors, under and by virtue of the said act thirdly above recited, did make its order, referring the said petition for hearing to the Chelmsford District Court of the county of Essex, he the said S. T. then and there being in custody within the walls of the said prison within the said district, and did transmit the said petition and the said schedule to such last-mentioned court for hearing accordingly; whereupon W. G., Esq., then and there being the judge of the said court of the county aforesaid, did forthwith appoint a time and place for the said S. T. to be brought up before him the said W. G., as such judge as aforesaid, there to be dealt with according to law, that is to say, for the purpose last aforesaid, did appoint the twenty-seventh day of March, in the year of our Lord one thousand eight hundred and fifty-two, at the Shire Hall, Chelmsford, the said last-mentioned day not being more than four calendar months after the date of such appointment. Notice of the making of which said vesting order as aforesaid, and of the said filing of the said schedule, and of the said time and place so appointed for the said S. T. to be brought up as aforesaid, the said W. G., as such judge as aforesaid, did then and there cause to be given to the said S. C. and the said other persons, the creditors of the said S. T., at whose suit the said S. T. was then still detained in custody in the said prison, and all the other creditors of the said S. T. named in the said schedule, resident within the United Kingdom, whose debts amounted to the sum of five pounds, and also to be inserted in the *London Gazette*.

And the jurors aforesaid, upon their oath aforesaid, do further present that afterwards, to wit, on the twenty-seventh day of March, in the year of our Lord one thousand eight hundred and fifty-two, at Chelmsford aforesaid, in the said county, the said S. T. being such prisoner as aforesaid, in pursuance of the said appointment, and under and by virtue of the said statute thirdly above recited, was brought up before the said W. G., then being such judge of the said court of the county aforesaid, the same court then and there being a court duly constituted, appointed, and holden under and in pursuance of the said statute secondly above recited, there to be examined touching and concerning his said schedule, at which time and place lastly above mentioned the said W. G., as such judge as aforesaid, did examine into the said schedule upon the oath of the said S. T.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said W. G., then and there, for divers good and lawful causes him thereunto moving, did adjourn the hearing and examination of the said S. T. from time to time, until a subsequent sitting of the said W. G. in the court of the county aforesaid, holden at Chelmsford, in and for

the said county, on Monday, the tenth day of February, in the year of our Lord one thousand eight hundred and fifty-three, at which time and place the said S. C., then and there being a creditor of the said S. T., did appear to examine and oppose the discharge of the said S. T., in pursuance of notice theretofore duly given by him the said S. C. to the said S. T. in that behalf, and then and there did oppose the discharge of the said S. T. from such custody as aforesaid.

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And the jurors aforesaid, upon their oath aforesaid, do further present that the said S. T., being so brought before the said W. G., being such judge of the said County Court of Essex aforesaid, was then and there, before the said W. G. in due manner sworn, and did take his corporal oath upon the Holy Gospel of God, to speak the truth and make true answer upon his said examination, and also to make true answers to such questions as should then and there be put to him touching and concerning the matters contained in the said schedule, the same having then been amended according to the form of the statute in such case made and provided; and touching and concerning such other matters and things as the said W. G., as such judge as aforesaid, should think fit and proper to inquire into, in order to the due execution of the law relating to the relief of insolvent debtors in England, in the matter of the said petition, he the said W. G., then and there, as such judge as aforesaid, having sufficient and competent lawful power and authority to administer the said oath to the said S. T. in that behalf. And the jurors aforesaid, upon their oath aforesaid, do further present that the said S. T. being so sworn as aforesaid, then and there, to wit, on the day and year last aforesaid, in the court of the county aforesaid, before the said W. G., then and there being judge of the said court, was then and there examined upon the said oath of him the said S. T., according to the form of the statute in such case made and provided, and of and concerning the said amended schedule, and the several matters therein contained; and of and concerning such other matters and things as then and there seemed to the said W. G. to be fit and proper to be enquired into. And the jurors aforesaid, upon their oath aforesaid, do further present that at and upon the said examination there was produced to the said S. T. a certain paper writing in the words, abbreviations, and figures following, that is to say, "pay this at Mill's bank, bring receipt one thousand six hundred pounds, Samuel Tillett," which said paper writing, it had then been alleged, accompanied a certain cheque for one thousand six hundred pounds which had been paid to the credit of the said S. T. with the said firm of Messrs. M. B. E. and Co., on the first day of January, in the year of our Lord one thousand eight hundred and fifty.

And the jurors aforesaid, upon their oath aforesaid, do further present, that at and upon the said examination, the following questions became and were material questions touching and concerning the matters contained in the said amended schedule, and which the said W. G. then and there, as such judge as aforesaid, was of opinion it was fit and proper should be put to the said S. T., and did in fact put and permit to be put to the said S. T., on his examination aforesaid, in order to the due execution of the laws relating to insolvent debtors in England, in the matter of the said petition, and in answer and reference to which it then and there became material and necessary in the matter of the said petition, that the said W. G., as such judge as aforesaid should be truly informed by the said S. T. on what day the said paper writing was written, and whether or not, on the first day of January, in the year of our Lord one thousand

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eight hundred and fifty, or on any other and what day, and upon what occasion the same had been written, and whether or not upon the occasion when the said cheque was so paid as aforesaid; and whether or not upon any other and what occasion, and whether or not it was the fact that the same had been written upon the occasion of one thousand pounds being received by the said S. T., and from whom such sum had been received, and whether or not, from one T. R., and to what the said paper writing had reference, and whether or not, to the receipt of one thousand pounds from the said T. R., and whether or not at the time when the said paper writing was so produced to the said S. T. as aforesaid, the whole of the said paper writing was in the handwriting of the said S. T., and whether it was the fact that any, and what part thereof, and whether any part of the figure 6 in the same paper writing was not in the handwriting of the said S. T. at the time when the same was so produced to him as aforesaid; and whether or not, on the first day of January, in the year of our Lord one thousand eight hundred and fifty, the said paper writing was in the same state in which it was when so produced to the said S. T. as aforesaid; and whether or not, at any time, the figure 6 appearing upon the said paper writing, had been by any person other than the said S. T., and without his assent, formed from a figure 0 by altering and converting a figure 0 into the said figure 6.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said S. T., being so sworn as aforesaid, not having the fear of God before his eyes, but devising and intending to pervert the due course of law and justice, and to deceive the said W. G. in the premises, then and there, to wit, on the tenth day of February, in the year of our Lord one thousand eight hundred and fifty-three, before the said W. G., as such judge as aforesaid, upon the said examination, unlawfully, falsely, wilfully, knowingly, and corruptly, did say, depose, swear, make answer, and give evidence touching and concerning the several questions and matters aforesaid, amongst other things, in substance and to the effect following, that is to say—that the said paper writing was written on a day other than the first day of January, in the year of our Lord one thousand eight hundred and fifty; that it was written upon the occasion of one thousand pounds being received by the said S. T. from the said T. R.; that the said paper writing had reference to the receipt of one thousand pounds by the said S. T. of the said T. R.; that it was not the fact that at the time when the said piece of paper was so produced to the said S. T. as aforesaid, the whole of the said paper writing was in the handwriting of him the said S. T.; that there was a part of the figure 6 in the said paper writing which was not then in the handwriting of the said S. T., and that on the first day of January, in the year of our Lord one thousand eight hundred and fifty, the said paper writing was not in the same state in which it was when so produced to the said S. T. as aforesaid, and that the figure 6, appearing upon the said paper writing, had been by some person other than him the said S. T., and without his assent, formed from a figure 0, by altering and converting a figure 0 into the said figure 6; whereas it was not nor is it the fact the said paper writing was written on a day other than the first day of January in the year of our Lord one thousand eight hundred and fifty; and whereas the same was not written upon the occasion of one thousand pounds being received by the said S. T. from the said T. R., as the said S. T. so said, deposed, swore, made answer, and gave evidence as aforesaid; and whereas in truth and in fact, the said paper writing never had

reference to the receipt of one thousand pounds by the said S. T. from T. R., as he the said S. T. so said, deposed, swore, made answer, and gave evidence as aforesaid; and whereas it was and is the fact, that at the time when the said S. T. so said, deposed, swore, made answer, and gave evidence as aforesaid, the whole of the said paper writing was in the handwriting of the said S. T., as the said S. T. at the time he so said, deposed, swore, made answer, and gave evidence as aforesaid well knew; and whereas every part of the said figure 6 then was and still is in the handwriting of the said S. T. And whereas in truth and in fact, on the said first day of January, in the year of our Lord one thousand eight hundred and fifty, the said paper writing was in the same state in which it was when so produced to the said S. T. as aforesaid; and whereas in truth and in fact the said figure 6 appearing upon the said paper writing had not at any time been by any person other than the said S. T., or without his assent formed from a figure 0 by altering and converting a figure 0 into a figure 6; and whereas the truth really was and is that the said writing and every part thereof was and is in the handwriting of the said S. T., and the same and every part thereof was written by him on the first day of January, in the year of our Lord one thousand eight hundred and fifty; and whereas the truth really was and is that the same was written upon the occasion of the said cheque being paid to the credit of the said S. T. as aforesaid, and upon no other occasion, and was intended to have reference to that transaction, and to no other transaction whatever.

And the jurors aforesaid, upon their oath aforesaid, do say that the said S. T., on the said tenth day of February, in the year of our Lord one thousand eight hundred and fifty-three, in the said court of the county aforesaid, on his oath aforesaid, before the said W. G., then being such judge as aforesaid, and then and there having sufficient and competent power and authority to administer the said oath to the said S. T. in that behalf upon the said examination of him the said S. T. unlawfully, falsely, knowingly, wilfully, and corruptly did forswear himself, give false evidence, and commit wilful and corrupt perjury in manner last aforesaid; against the form of the statute and statutes in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

Precedents.

No. CXVI.
Indictment for
perjury.

No. CXVII.

Indictment against two Defendants for obtaining Goods by falsely pretending that one of them was of a certain Trade, and a respectable and responsible Person; with Counts for Conspiracy.

CENTRAL Criminal Court, } THE jurors for our Lady the Queen,
(to wit.) } upon their oath present, that heretofore, and before and at the time of the commission of the offence herein-after next mentioned, J. H. G., late of the parish of Saint Marylebone, in the county of Middlesex, labourer, had, under the assumed name of L., made application to E. R. and another, his partner in trade, to be supplied

Precedents.
No. CXVII.
Indictment for
obtaining goods
by false
pretences.

by them with goods upon credit, and that the said J. H. G. and M. H., otherwise called J. S., otherwise called T. B., late of the same place, labourer, devising and contriving fraudulently to induce and persuade the said E. R. and another to advance to the said J. H. G. the said goods on the faith of his respectability and ability to pay for the same, on the 15th day of October, A.D. 1852, at the parish aforesaid, in the county aforesaid, and within the jurisdiction of the said Central Criminal Court, unlawfully, knowingly, and designedly did falsely pretend to the said E. R. that the surname of him the said J. H. G., then was L., that the said J. H. G. then was a painter, and had recently come from the country to reside in London; and that he the said J. H. G., then was a respectable and responsible person, to whom credit might then safely be given for the said goods; by means of which said false pretences, they, the said J. H. G. and M. H., otherwise called J. S., otherwise called T. B., did then and there, unlawfully, knowingly, and designedly, fraudulently obtain of and from the said E. R. and another four and a-half barrels of ale of the value of 10*l.* 17*s.*, one barrel of stout of the value of 2*l.*, four barrels of porter of the value of 6*l.*, thirty-six bottles of ale of the value of 12*s.*, and eighty-four bottles of stout of the value of 1*l.* 3*s.* 6*d.*, of the goods and chattels of the said E. R. and another, with intent then and there to cheat and defraud them of the same; whereas in truth and in fact, the surname of the said J. H. G. was not then L., nor was he then a painter, nor had he then recently come from the country to reside in London, as the said J. H. G. and M. H., otherwise called J. S., otherwise called T. B., so falsely pretended as aforesaid; and whereas, in truth and in fact, the said J. H. G. was not then a respectable and responsible person to whom credit might then safely be given for the said goods or any goods whatever; and whereas, on the contrary thereof, the said J. H. G. then was a person in very impoverished circumstances and of very disreputable character, and had so assumed the said false name of L.; and the said J. H. G. and M. H., otherwise called J. S., otherwise called T. B., so falsely pretended that the said J. H. G. had then recently come from the country to reside in London as aforesaid, the better to disguise and conceal his impoverished circumstances and disreputable character aforesaid, and thereby deceive, cheat, and defraud the said E. R. and another as aforesaid; against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

Second Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that heretofore and before the commission of the offence hereinafter next mentioned, the said J. H. G. had made application to the said E. R. and another, his partner in trade, to be supplied by them with goods upon credit, and that the said J. H. G. and M. H., otherwise called J. S., otherwise called T. B., devising, contriving, and intending to deceive the said E. R. and another, and to defraud them of such goods, on the day and year aforesaid, at the parish aforesaid, in the county aforesaid, and within the jurisdiction of the said Central Criminal Court, unlawfully, knowingly, and designedly did falsely pretend to the said E. R. that the said J. H. G. then was a respectable and responsible man, to whom credit might be safely given for such goods; by means of which said false pretences, they, the said J. H. G. and M. H., otherwise called J. S., otherwise called T. B., did then and there unlawfully, knowingly, and designedly, fraudulently obtain of and from the said E. R. and another, four and a-half barrels of ale, &c., the goods and

chattels of the said E. R. and another, with intent to cheat and defraud them of the same : whereas, in truth and in fact, the said J. H. G. was not then a respectable and responsible man, to whom credit might be safely given for the said goods, as they the said J. H. G. and M. H., otherwise called J. S., otherwise called T. B., so falsely pretended as aforesaid, as they then and there well knew ; against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

Precedents.

No. OXVII.
Indictment for
obtaining goods
by false
pretences.

Third Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said J. H. G. and M. H., otherwise called J. S., otherwise called T. B., devising and intending to defraud the said E. R. and another, his partner in trade, and to induce and persuade them to advance to the said J. H. G. the sum of 25*l.* on the promissory note of them the said J. H. G. and M. H., otherwise called J. S., otherwise called T. B., upon the faith of their being persons of respectability, and able and willing to repay the said sum of money on the 20th day of October, A.D. 1852, at the parish aforesaid, in the county aforesaid, and within the jurisdiction of the said Central Criminal Court, did, under assumed names, make the said promissory note, and deliver the same to the said E. R. and another, and did then and there, unlawfully, knowingly, and designedly, falsely pretend to the said E. R. that the surname of him, the said J. H. G., then was L., that the said J. H. G. then was a painter, and had recently come from the country to reside in London; that the surname of him, the said M. H., otherwise called J. S., otherwise called T. B., then was S., that he then was a tailor, and that he the said J. H. G., then was a respectable and responsible person, to whom credit might then be safely given by the said E. R. and another ; by means of which said false pretences, they, the said J. H. G. and M. H., otherwise called J. S., otherwise called T. B., did then and there, unlawfully, knowingly, and designedly, fraudulently obtain of and from the said E. R. and another, divers of their moneys, amounting to the sum of 25*l.*, with intent to cheat and defraud them of the same ; whereas, in truth and in fact, the surname of him, the said J. H. G., was not then L., nor was he then a painter, nor had he then recently come from the country to reside in London, as the said J. H. G. and M. H., otherwise called J. S., otherwise called T. B., falsely pretended as aforesaid ; and whereas, in truth and in fact, the surname of him the said M. H., otherwise called J. S., otherwise called T. B., was not S., nor was he then a tailor, as they the said J. H. G. and M. H., otherwise called J. S., otherwise called T. B., so falsely pretended as aforesaid ; and whereas, in truth and in fact, the said J. H. G. was not then a respectable and responsible person, to whom credit might then be safely given by the said E. R. and another, as the said J. H. G. and M. H., otherwise called J. S., otherwise called T. B., so falsely pretended as aforesaid ; and whereas, on the contrary thereof, the said J. H. G. then was in very impoverished circumstances and of very disreputable character, and had then so assumed the false name of L., and they the said J. H. G. and M. H., otherwise called J. S., otherwise called T. B., so falsely pretended that the said J. H. G. was a painter, and had then recently come from the country to reside in London as aforesaid, the better to disguise and conceal his impoverished circumstances and disreputable character aforesaid, and thereby deceive, cheat and defraud the said E. R. and another; against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

Precedents.
 —
 No. CXVII.
 Indictment for
 obtaining goods
 by false
 pretences.

Fourth Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said J. H. G. and M. H., otherwise called J. S., otherwise called T. B., devising and intending to defraud the said E. R. and another, his partner in trade, and to induce and persuade them to advance to the said J. H. G. the sum of 25*l.* on the security of the promissory note of them the said J. H. G. and M. H., otherwise called J. S., otherwise called T. B., upon the faith of the said J. H. G., being a person of credit and respectability, on the 20th day of October, A.D. 1852, at the parish aforesaid, in the county aforesaid, and within the jurisdiction of the said Central Criminal Court, did make such their promissory note, and deliver the same to the said E. R. and another, and did then and there, unlawfully, knowingly, and designedly, falsely pretend to the said E. R., that he the said J. H. G. then was a respectable and responsible person, to whom credit might then be safely given by the said E. R. and another; by means of which said false pretences, they, the said J. H. G. and M. H., otherwise called J. S., otherwise called T. B., did then and there, unlawfully, knowingly, and designedly, fraudulently obtain of and from the said E. R. and another, divers of their moneys, amounting to the sum of 25*l.*, with intent to cheat and defraud them of the same; whereas, in truth and in fact, the said J. H. G. was not then a respectable and responsible person, to whom credit might then be safely given by the said E. R. and another, as they, the said J. H. G. and M. H. then and there, and at the time they so falsely pretended as aforesaid, well knew; against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

Fifth Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said J. H. G. and M. H., otherwise called J. S., otherwise called T. B., heretofore, to wit, on the 14th day of October, A.D. 1852, at the parish aforesaid, in the county aforesaid, and within the jurisdiction of the said Central Criminal Court, unlawfully and wickedly did conspire, combine, confederate, and agree together, and with divers evil-disposed persons, to wit, to the jurors aforesaid as yet unknown, by divers false pretences, and by divers unlawful, fraudulent, and indirect ways, means, devices, contrivances, stratagems, and representations, to obtain and acquire of and from the said E. R. and another, his partner in trade, divers large quantities of ale, beer, stout, and other goods and chattels, of and belonging to the said E. R. and another, of great value, to wit, of the value of 100*l.*, and wrongfully to deprive, cheat, and defraud the said E. R. and another of the same, and of the price and value thereof; against the peace of our said Lady the Queen, her crown and dignity.

Sixth Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said J. H. G. and M. H., otherwise called J. S., otherwise called T. B., heretofore, to wit, on the 20th day of October, A.D. 1852, at the parish aforesaid, in the county aforesaid, and within the jurisdiction of the said Central Criminal Court, unlawfully and wickedly did conspire, combine, confederate and agree together and with divers evil-disposed persons, to wit, to the jurors aforesaid as yet unknown, by divers false pretences and by divers unlawful, fraudulent, and indirect ways, means, devices, contrivances, stratagems, and representations, to obtain and acquire of and from the said E. R. and another, his partner in trade, divers of the moneys of the said E. R. and another, to wit, to the amount of 25*l.*, and to cheat and defraud them of the same; against the peace of our said Lady the Queen, her crown and dignity.

STATUTES AND PARTS OF STATUTES

AFFECTING THE CRIMINAL LAW, PASSED IN THE SESSION OF
PARLIAMENT OF 1853.

BANK NOTES ACT.

16 VICT. CAP. 2.

*An Act to amend an Act of the First Year of King George the Fourth,
for the further Prevention of forging and counterfeiting Bank Notes.*
[16th December, 1852.]

WHEREAS by an act passed in the first year of the reign of King George the Fourth it was enacted, that all bank notes of the Governor and Company of the Bank of England of the description therein mentioned, whereon the names of the persons intrusted by the governor and company to sign the same should be impressed by machinery with the authority of the said governor and company, should be good and valid: and whereas doubts have arisen whether the provisions of the said act are not limited to notes of the particular description therein mentioned: be it therefore declared and enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that all notes, bank post bills, and bank bills of exchange of the said governor and company, whereon the name or names of one of the cashiers of the said governor and company for the time being, or other officer appointed or to be appointed by the said governor and company in that behalf, shall or may be impressed or affixed by machinery provided for that purpose by the said governor and company, and with the authority of the said governor and company, shall be taken to be good and valid to all intents and purposes as if such notes, bank post bills, and bank bills of exchange had been subscribed in the proper handwriting of such cashier or other officer as aforesaid, and shall be deemed and taken to be bank notes, bank post bills, and bank bills of exchange within the meaning of all laws and statutes whatsoever, and shall and may be described as bank notes, bank post bills, and bank bills of exchange respectively in all indictments and other criminal and civil proceedings whatsoever, any law, statute, or usage to the contrary notwithstanding.

Signatures of the cashiers of the Bank of England may be impressed on Notes, &c. by machinery instead of being written, which shall be valid.

AGGRAVATED ASSAULTS ACT.

16 VICT. CAP. 30.

An Act for the better Prevention and Punishment of aggravated Assaults upon Women and Children, and for preventing Delay and Expence in the Administration of certain Parts of the Criminal Law.—[14th June, 1853.]

WHEREAS the present law has been found insufficient for the protection of women and children from violent assaults: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Power of punishing, on summary conviction, assaults committed on females and male children under 14 years of age, and occasioning actual bodily harm, extended.

I. When any person shall be charged before two justices of the peace sitting at a place where the petty sessions are usually held, or before any magistrate of the police courts of the metropolis sitting at any such police court, or before any stipendiary magistrate elsewhere, with an assault upon any female whatever, or upon any male child whose age shall not in the opinion of such justices or police or stipendiary magistrates exceed fourteen years, either upon the complaint of the party aggrieved or otherwise, it shall be lawful for the said justices or police or stipendiary magistrate, if the assault is of such an aggravated nature that it cannot in their or his opinion be sufficiently punished under the provisions of the statute ninth George the Fourth, chapter thirty-one, to proceed to hear and determine in a summary way, and if they shall find the same to be proved, to convict the person accused; and every offender so convicted shall be liable to be imprisoned in the common gaol or house of correction, with or without hard labour, for a period not exceeding six calendar months, or to pay a fine not exceeding (together with costs) the sum of twenty pounds, and in default of payment to be imprisoned as aforesaid, with or without hard labour, for a period not exceeding six calendar months, unless such fine and costs be sooner paid, and if the magistrate or magistrates shall so think fit shall be bound to keep the peace and be of good behaviour for any period not exceeding six calendar months from the expiration of such sentence; and such conviction shall be a bar to all future proceedings, civil or criminal, for or in respect of the same assault; and no person convicted under this act shall be entitled to appeal against such conviction to the general quarter sessions of the peace, anything to the contrary in any statute notwithstanding.

No appeal against such conviction.

Court of general or quarter sessions may, upon proof of conviction and notice to parties, declare a recognizance to keep the peace or to

II. Where any recognizance to keep the peace or to be of good behaviour is entered into by any person, as principal or surety, before the court of general or quarter sessions of the peace of any county, riding, division, city, borough, or place, or before any justice or justices of the peace of any county, riding, division, city, borough, or place, it shall be lawful for any such court of general or quarter sessions of the peace as aforesaid, upon applications made to such court, to declare such recognizance to be forfeited, upon proof of a conviction of the party

bound by such recognizance of any offence which is in law a breach of the condition of the same; and upon further proof that a notice in writing, signed by the person seeking to put such recognizance in force, has, seven clear days before the commencement of such sessions, been personally served upon or left at the usual place of abode of the party or each of the parties (if more than one) who entered into such recognizances, that an application will be made to the said general or quarter sessions, that the said recognizance shall be declared forfeited, and if such recognizance shall be declared forfeited all such proceedings shall be had thereon as in the case of a recognizance forfeited at such court of general or quarter sessions, and all the provisions of the act of the third year of King George the Fourth, chapter forty-six, and of the act of the fourth year of the said king, chapter thirty-seven, applicable to a recognizance so forfeited at such court, shall apply to a recognizance which shall, upon such application and proof as hereinbefore mentioned, be declared to be forfeited; and upon notice in writing of such intended application to the said general or quarter sessions being given to any justice or justices, before whom any such recognizance shall have been taken, four clear days before the commencement of the said sessions, the said justice or justices shall transmit the said recognizance to the clerk of the peace of the county, riding, division, city, borough, or place within which the said recognizance shall have been taken, with a certificate that the said recognizance is sent to him by reason of such last-mentioned notice having been so given as aforesaid.

16 Vict. c. 30.
Aggravated
Assaults Act.

be of good
behaviour to be
forfeited.

III. No person committed to prison under any warrant or order of one justice of the peace for or on account of not entering into recognizances or finding sureties to keep the peace, or to be of good behaviour, shall be detained under such warrant or order for more than twelve calendar months from the time of such commitment.

Detention of
persons com-
mitted to prison
for not entering
into recogniz-
ance limited.

IV. And whereas, by reason of the establishment of a Court of Criminal Appeal, the removal of indictments by writ of *certiorari* is seldom necessary for the decision of questions of law, but is nevertheless sometimes resorted to for purposes of expense and delay: be it enacted, that no indictment, except indictments against bodies corporate not authorized to appear by attorney in the court in which the indictment is preferred, shall be removed into the Court of Queen's Bench, or into the Central Criminal Court, by writ of *certiorari*, either at the instance of the prosecutor or of the defendant (other than the Attorney-General acting on behalf of the crown), unless it be made to appear to the court from which the writ is to issue, by the party applying for the same, that a fair and impartial trial of the case cannot be had in the court below, or that some question of law of more than usual difficulty and importance is likely to arise upon the trial, or that a view of the premises in respect whereof any indictment is preferred, or a special jury, may be required for the satisfactory trial of the same.

Indictments for
misdemeanor
not to be
removed by *cer-
tiorari*, except
on affidavit that
a fair trial
cannot be had.

V. And whereas it is expedient to make further provision for preventing the vexatious removal of indictments into the Court of Queen's Bench: be it therefore enacted, that whenever any writ of *certiorari* to remove an indictment into the said court shall be awarded at the instance of a defendant or defendants, the recognizance now by law required to be entered into before the allowance of such writ shall contain the further provision following; that is to say, that the defendant or defendants, in case he or they shall be convicted, shall pay to the prosecutor his costs incurred subsequent to the removal of such indictment; and whenever

No *certiorari*
to issue to
remove indict-
ment, unless
recognizance
given for pay-
ment of costs.

16 Vict. c. 30.

*Aggravated
Assaults Act.*

How costs to be
taxed and reco-
vered.

If no recogniz-
ance given,
court to try as
if no *certiorari*
awarded.

Not to apply to
certain *certio-
raris* awarded.

Secretary of
State may issue
his warrant for
bringing up a
prisoner (not in
custody under
civil process)
to give evidence.

any such writ of *certiorari* shall be awarded at the instance of the prosecutor, the said prosecutor shall enter into a recognizance (to be acknowledged in like manner as is now required in cases of writs of *certiorari* awarded at the instance of a defendant) with the condition following ; that is to say, that the said prosecutor shall pay to the defendant or defendants, in case he or they shall be acquitted, his or their costs incurred subsequent to such removal.

VI. The costs hereinbefore respectively mentioned shall be taxed according to the course of the Court of Queen's Bench ; and for the recovery thereof the persons entitled thereto shall, at the expiration of ten days after demand made of the person or persons at whose instance the writ of *certiorari* was awarded, and on oath made of such demand and refusal of payment, have a writ of attachment granted against him or them by the Court of Queen's Bench for such contempt ; and the said court shall and may also order the said recognizance to be estreated into the Exchequer.

VII. If the person or persons at whose instance any writ of *certiorari* shall be awarded shall not, before the allowance thereof, enter into such recognizance as is hereinbefore provided, the court to which such writ may be directed shall and may proceed to the trial of the indictment, as if such writ of *certiorari* had not been awarded.

VIII. This act shall not extend to any writ of *certiorari* awarded at the instance of Her Majesty's Attorney-General.

IX. It shall be lawful for one of Her Majesty's principal Secretaries of State, or any judge of the Court of Queen's Bench or Common Pleas, or any Baron of the Exchequer, in any case where he may see fit to do so, upon application by affidavit, to issue a warrant or order under his hand for bringing up any prisoner or person confined in any gaol, prison, or place, under any sentence or under commitment for trial or otherwise, (except under process in any civil action, suit, or proceeding,) before any court, judge, justice, or other judicature, to be examined as a witness in any cause or matter, civil or criminal, depending or to be inquired of, or determined in or before such court, judge, justice, or judicature ; and the person required by any such warrant or order to be so brought before such court, judge, justice, or other judicature shall be so brought under the same care and custody, and be dealt with in like manner in all respects, as a prisoner required by any writ of *habeas corpus* awarded by any of Her Majesty's Superior Courts of Law at Westminster to be brought before such court to be examined as a witness in any cause or matter depending before such court is now by law required to be dealt with.

X. This act shall not extend to Scotland or Ireland.

CONVICTED PRISONERS REMOVAL AND CONFINEMENT
ACT.

16 & 17 VICT. CAP. 43.

An Act for enabling the Justices of Counties to contract in certain Cases for the Maintenance and Confinement of convicted Prisoners in the Gaols of adjoining Counties.—[4th August, 1853.]

WHEREAS by an Act passed in the fifth year of the reign of his late Majesty King William the Fourth, intituled *An Act for effecting greater Uniformity of Practice in the Government of the several Prisons in England and Wales, and for appointing Inspectors of Prisons in Great Britain*, it was enacted, that it should be lawful for his said Majesty, by an order to be notified in writing by one of his Majesty's principal Secretaries of State, to direct that any persons in prison within England and Wales under sentence of any court or of any competent authority for any offence committed by them should be moved from the prison in which they were confined to any other of his Majesty's prisons or penitentiaries within England or Wales, there to be imprisoned for and during their respective terms of imprisonment: and whereas it is expedient to extend the provisions of the said act by enabling the justices of any county to enter into contracts in certain cases for the maintenance and confinement of convicted prisoners in the prison of an adjoining county: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that whenever it shall appear to her Majesty's principal Secretary of State for the Home Department, by the report of the justices assembled at any general quarter sessions of the peace or adjournment thereof, held for any county, or riding or division of a county, in England or Wales, that any gaol or house of correction for such county, riding or division of a county, is either permanently or occasionally insufficient for or inadequate to the safe confinement of the number of prisoners committed thereto, or to give effect to the rules prescribed and then in force under any acts for the government and discipline of such gaol or house of correction, and that the justices of the peace of any adjoining county, or riding or division of a county, possess the requisite accommodation, and are willing to receive into and maintain in the gaol or house of correction of such adjoining county, or riding or division of a county, any specified number of such prisoners, it shall be lawful for the said Secretary of State, if he shall think proper so to do, by writing under his hand to authorize the visiting justices, or any three of them, of such adjoining counties, or ridings or divisions of counties respectively, by writing under their hand, to enter into such contracts for the reception, maintenance, and confinement of such prisoners in the gaol or house of correction of any adjoining county, or riding or division of a county, for such period and

5 & 6 W. 4,
c. 38.

When gaol of any county is insufficient for the custody of prisoners, the Secretary of State may authorize the justices of any adjoining county to contract for the maintenance, &c. of such prisoners.

16 & 17 Vict.
c. 43.

*Convicted Pri-
soners Removal
Act.*

upon such terms as may be mutually agreed upon between the visiting justices of such adjoining counties, or ridings or divisions of counties respectively, and when in pursuance of such authority any such contract shall have been entered into, the same or a counterpart shall be submitted to the next general quarter sessions of the peace of the respective counties, or ridings or divisions of counties, parties thereto, and filed among the records of the said counties, ridings, or divisions respectively; and all payments to become due under such contract shall be payable out of the county rates or out of such other fund as but for such contract would have been chargeable with the cost of maintenance and confinement of the said prisoners in the gaol or house of correction from which they may be so removed or transferred as aforesaid.

TRANSPORTATION ACT.

16 & 17 VICT. CAP. 99.

An Act to substitute, in certain cases, other Punishment, in lieu of Transportation.—[20th August, 1853.]

No person to be sentenced to transportation, except for life or for fourteen years or upwards. Sentence of penal servitude instead of transportation for less than fourteen years. Persons liable to transportation for fourteen years or upwards or for life may still be sentenced to transportation, or to penal servitude instead. Terms of penal servitude which are to be awarded instead of the present terms of transportation.

WHEREAS by reason of the difficulty of transporting offenders beyond the seas it has become expedient to substitute, in certain cases, other punishment in lieu of transportation: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. After the commencement of this act no person shall be sentenced to transportation who if this act had not been passed would not have been liable to be transported for life, or for a term of fourteen years or upwards; and no person shall be sentenced to transportation for any term less than fourteen years.

II. Any person who if this act had not been passed might have been sentenced to transportation for a term of less than fourteen years shall be liable, at the discretion of the court, to be kept in penal servitude for such term as hereinafter mentioned.

III. Any person who if this act had not been passed might have been sentenced to transportation for a term of fourteen years or upwards or for life shall, after the commencement of this act, be liable, at the discretion of the court, to be sentenced either to such transportation for fourteen years or upwards or for life, or to be kept in penal servitude for such term as under this act may be awarded instead of such transportation.

IV. The terms of penal servitude to be awarded instead of the transportation to which any offender would have been liable if this act had not been passed shall be as follows; (that is to say,)

Instead of transportation for seven years or for a term not exceeding seven years, penal servitude for the term of four years:

Instead of any term of transportation exceeding seven years and

not exceeding ten years, penal servitude for any term not less than four and not exceeding six years :

Instead of any term of transportation exceeding ten years, and not exceeding fifteen years, penal servitude for any term not less than six and not exceeding eight years :

Instead of any term of transportation exceeding fifteen years, penal servitude for any term not less than six and not exceeding ten years :

Instead of transportation for the term of life penal servitude for the term of life :

And in every case where, at the discretion of the court, one of any two or more of the terms of transportation hereinbefore mentioned might have been awarded, the court shall have the like discretion to award one of the two or more terms of penal servitude hereinbefore mentioned in relation to such terms of transportation.

V. Whenever Her Majesty, or the Lord Lieutenant or other chief Governor or Governors of Ireland for the time being, shall be pleased to extend mercy to any offender convicted of any offence for which he may be liable to the punishment of death, upon condition of his being kept to penal servitude for any term of years or for life, such intention of mercy shall have the same effect and may be signified in the same manner, and all courts, justices, and others shall give effect thereto and to the condition of the pardon in like manner, as in the cases where Her Majesty, or the Lord Lieutenant or other chief Governor or Governors of Ireland for the time being, is or are now pleased to extend mercy upon condition of transportation beyond seas, the order for the execution of such punishment as Her Majesty, or the Lord Lieutenant or other chief Governor or Governors of Ireland for the time being, may have made the condition of her, his, or their mercy, being substituted for the order for transportation.

16 & 17 Vict.
c. 99.

Transportation
Act.

Conditional
pardons to be
allowed with
reference to the
substituted
punishment, as
in cases of
pardons on
condition of
transportation.

VI. Every person who under this act shall be sentenced or ordered to be kept in penal servitude may, during the term of the sentence or order, be confined in any such prison or place of confinement in any part of the United Kingdom, or in any river, port, or harbour of the United Kingdom, in which persons under sentence or order of transportation may now by law be confined, or in any other prison in the United Kingdom, or in any part of Her Majesty's dominions beyond the seas, or in any port or harbour thereof, as one of Her Majesty's principal Secretaries of State may from time to time direct ; and such person may during such term be kept to hard labour and otherwise dealt with in all respects as persons sentenced to transportation may now by law be dealt with while so confined.

Persons under
sentence or
order of penal
servitude, how
to be dealt
with.

VII. All acts and provisions of acts now applicable with respect to persons under sentence or order of transportation shall, so far as may be consistent with the express provisions of this act, be construed to extend and be applicable to persons under any sentence or order of penal servitude under this act ; and all the powers and provisions contained in the act of the fifth year of King George the Fourth, chapter eighty-four, authorizing the appointment by Her Majesty from time to time of places of confinement as therein mentioned for male offenders under sentence or order of transportation, and authorizing Her Majesty to order male offenders convicted in Great Britain and under sentence or order of transportation to be kept to hard labour in any part of Her Majesty's dominions out of England, shall extend and be applicable to and for the

All acts, &c.,
concerning con-
victs sentenced
to transpor-
tation made
applicable for
the purposes of
this act.

16 & 17 Vict.
c. 99.

*Transportation
Act.*

appointment by Her Majesty of like places of confinement in any part of the United Kingdom for offenders (whether male or female) sentenced under this act in any part of the United Kingdom, and to and for the ordering of such offenders to be kept to hard labour in any part of Her Majesty's dominions out of England; and all the provisions of the said act concerning the removal to or from and confinement in the places of confinement in or out of England, appointed under the said act, of the offenders therein mentioned, and all acts and provisions of acts now in force concerning or relating to the regulation and government of such places of confinement, and the custody, treatment, management, and control of or otherwise in relation to the offenders confined therein, shall, so far as the same may be consistent with the express provisions of the act, extend and be applicable to and for the removal to and from and confinement in the places of confinement appointed under this act of the offenders sentenced in any part of the United Kingdom, and otherwise be applicable to and in respect of such places of confinement and the offenders to be confined therein.

Powers of Secretary of State to be exercised in Ireland by Lord Lieutenant.

VIII. Provided always, that all the powers vested under this act, expressly or by reference to any other act, in one of Her Majesty's principal Secretaries of State, shall in relation to places of confinement in Ireland, or where such powers are otherwise to be exercised in Ireland, be exercised by the Lord Lieutenant or other chief Governor or Governors of Ireland; and where the signature of one of Her Majesty's principal Secretaries of State would be necessary in relation to the exercise of such powers, the signature of such Lord Lieutenant or chief Governor or Governors, or his or their chief secretary, shall be sufficient in the case of the exercise of such powers by such Lord Lieutenant or chief Governor or Governors.

Her Majesty may grant licences to be at large to convicts under sentence of transportation.

IX. It shall be lawful for Her Majesty, by an order in writing under the hand and seal of one of Her Majesty's principal Secretaries of State, to grant to any convict now under sentence of transportation, or who may hereafter be sentenced to transportation, or to any punishment substituted for transportation by this act, a licence to be at large in the United Kingdom and the Channel Islands, or in such part thereof respectively as in such licence shall be expressed, during such portion of his or her term of transportation or imprisonment, and upon such conditions in all respects as to Her Majesty shall seem fit; and it shall be lawful for Her Majesty to revoke or alter such licence by a like order at Her Majesty's pleasure.

Holder of licence not to be imprisoned, &c., by reason of his sentence.

X. So long as such licence shall continue in force and unrevoked, such convict shall not be liable to be imprisoned or transported by reason of his or her sentence, but shall be allowed to go and remain at large according to the term of such licence.

If licence revoked, the convict may be apprehended, and committed to prison.

XI. Provided always, that if it shall please Her Majesty to revoke any such licence as aforesaid it shall be lawful for one of Her Majesty's principal Secretaries of State, by warrant under his hand and seal, to signify to any one of the police magistrates of the metropolis that such licence has been revoked, and to require such magistrate to issue his warrant under his hand and seal for the apprehension of the convict to whom such licence was granted, and such magistrate shall issue his warrant accordingly, and such warrant shall and may be executed by the constable to whom the same shall be delivered for that purpose in any part of the United Kingdom, or in the isles of Jersey, Guernsey, Alderney, or Sark, and shall have the same force and effect in all the said places as if

the same had been originally issued or subsequently endorsed by a justice of the peace or magistrate, or other lawful authority having jurisdiction in the place where the same shall be executed ; and such convict when apprehended under such warrant shall be brought, as soon as he conveniently may be, before the magistrate by whom the said warrant shall have been issued, or some other magistrate of the same court, and such magistrate shall thereupon make out his warrant under his hand and seal for the recommitment of such convict to the prison or place of confinement from which he was released by virtue of the said licence, and such convict shall be so recommitted accordingly, and shall thereupon be remitted to his or her original sentence, and shall undergo the residue thereof as if no such licence had been granted.

16 & 17 Vict.
c. 99.

Transportation
Act.

XII. No person shall, after the commencement of this act, be liable to be transported by reason only of a conviction for larceny after a previous conviction for felony, but every such person so convicted may be punished by penal servitude for any term not less than four years and not more than ten years.

Persons convicted of larceny after previous conviction for felony not to be transported.

XIII. Provided always, that nothing in this act contained shall in any manner affect Her Majesty's royal prerogative of mercy, or any prerogative of mercy vested in the Lord Lieutenant or other chief Governor or Governors of Ireland for the time being.

Queen's prerogative.

XIV. Provided also, that nothing herein contained shall interfere with or affect the authority or discretion of any court in respect of any punishment which such court may now award or pass on any offender other than transportation, but where such other punishment may be awarded at the discretion of the court, instead of transportation, or in addition thereto, the same may be awarded instead of or (as the case may be), in addition to the punishment, substituted for transportation under this act.

Discretion of court as to alternate punishments not to be affected.

XV. For the purposes of this act, the term "transportation" shall include banishment beyond the seas.

Transportation to include banishment.

XVI. This act shall commence from and after the first day of September one thousand eight hundred and fifty-three.

Commencement of act.

DEFACING THE COIN ACT.

16 & 17 VICT. CAP. 102.

An Act to prevent the defacing of the current Coin of the Realm.—
[20th August, 1853.]

WHEREAS a practice has arisen of defacing the coin of the realm by stamping the same for advertising purposes, and bending the same, and it is expedient to make provision for preventing the coin from being so defaced and bent : be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

16 & 17 Vict.
c. 102.

*Defacing the
Coin Act.*

Penalty for de-
facing the coin
by stamping
words thereon
or bending the
same.

Tender of coin
so defaced not
to be a legal
tender, and
penalty for
uttering same.

I. If any person shall deface any of the Queen's current gold, silver or copper coin, by stamping thereon any names or words, whether such coin shall or shall not be thereby diminished or lightened, or shall use any machine or instrument for the purpose of bending the same, every such offender shall in England and Ireland be guilty of a misdemeanor, and in Scotland of a crime or offence, and being convicted thereof shall be liable to fine or imprisonment, or fine and imprisonment at the discretion of the court.

II. No tender of payment in money made in any gold, silver, or copper coin so defaced or stamped as aforesaid shall be allowed to be legal tender; and if any person shall tender, utter, or put off any coin so defaced, stamped, or bent as aforesaid, he shall, on summary conviction thereof before two justices, be liable to forfeit and pay any sum not exceeding forty shillings: provided always, that it shall not be lawful for any person to proceed for any such penalty as last aforesaid without the consent (in England or Ireland) of her Majesty's Attorney-General for England or Ireland respectively, or (in Scotland) of the Lord Advocate.

APPREHENSION OF OFFENDERS ACT AMENDMENT.

16 & 17 VICT. CAP. 118.

An Act to amend an Act of the seventh year of Her Majesty for the better Apprehension of certain Offenders.—[20th August, 1853.]

6 & 7 Vict.
c. 34.

WHEREAS by an act passed in the session holden in the sixth and seventh years of her Majesty (chapter thirty-four) "for the better apprehension of certain offenders," it is provided, that it shall not be lawful for any person to endorse his name upon any such warrant as therein mentioned, for the purpose of authorizing the apprehension of any person under that act, unless it shall appear upon the face of the said warrant that the offence which the person for whose apprehension the said warrant has been issued is charged to have committed is such that, if committed within that part of Her Majesty's dominions where the warrant is so endorsed, it would have amounted in law to a treason, or some felony such as the justices of the peace in general or quarter sessions assembled have not authority to try in England under the provisions of an act passed in the sixth year of Her Majesty, intituled *An Act to define the Jurisdiction of Justices in General and Quarter Sessions of the Peace*, or unless the depositions appear sufficient to warrant the committal of such person for trial: and whereas it is expedient that the provisions of the said act should be extended to persons charged with any felony: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the recited enactment shall hereafter be read and construed as if the words "such as the justices of the peace in general or quarter sessions assembled have not authority to try in England under the provisions of an act passed in the sixth year of the reign of Her Majesty, intituled *An Act to define the Jurisdiction of Justices in General and Quarter Sessions of the Peace*," had been omitted therein.

5 & 6 Vict.
c. 38.

Recited act
extended to all
felonies.

FEMALE CONVICTS ACT.

16 & 17 VICT. CAP. 121.

An Act for providing Places of Confinement in England or Wales for Female Offenders under Sentence or Order of Transportation.—[20th August, 1853.]

WHEREAS by section ten of an act of the fifth year of King George the Fourth, chapter eighty four, it was enacted, that it should be lawful for His Majesty from time to time, by warrant under his royal sign manual, to appoint places of confinement within England or Wales, either at land, or on board vessels to be provided by His Majesty in the River Thames or some other river or within the limits of some port or harbour of England or Wales, for the confinement of male offenders under sentence or order of transportation, which should be under the management of a superintendent and overseer to be appointed by His Majesty ; and that it should be lawful for one of His Majesty's principal Secretaries of State to direct the removal of any male offender who should be under sentence of death, but who should be reprieved, or whose sentence should be respited during His Majesty's pleasure, or who should be under sentence or order of transportation, to any of the places of confinement so appointed: and by the said act it was enacted, that it should be lawful for His Majesty to appoint a superintendent of the said places of confinement, and, in case it should be deemed expedient, also an assistant or deputy to such superintendent, at one or more of the said places of confinement, and also an overseer of each such place of confinement : and whereas by an act of the session holden in the ninth and tenth years of Her Majesty, chapter twenty-six, it was enacted, that upon the next vacancy in the office of superintendent of convicts in England under sentence or order of transportation, so much of the said act of the fifth year of King George the Fourth as provides for the appointment of such superintendent by Her Majesty, or any overseer or assistant or deputy to such superintendent, should be repealed, and that all male offenders in England under sentence or order of transportation should be thenceforth in the custody and management of such person or persons as should be for that purpose appointed by one of Her Majesty's principal Secretaries of State, and that the provisions of the said act of the fifth year of King George the Fourth, not altered by the act now in recital, with respect to the superintendent and overseer having custody of any offenders under the said act, should apply to the persons severally having the custody and management of such offenders under the said act now in recital : and whereas by an act of the session holden in the thirteenth and fourteenth years of Her Majesty, chapter thirty-nine, all such of the powers and duties theretofore vested in and to be performed by the said superintendent of convicts as by the said act of the ninth and tenth years of Her Majesty were transferred to the person or persons having the custody and management of such offenders as aforesaid under that act, were by

5 G. 4, c. 84.

9 & 10 Vict. c. 26.

13 & 14 Vict. c. 39.

16 & 17 Vict.
c. 121.

*Female Con-
victs Act.*

Provisions
for and
concerning
appointment
of places of
confinement
in England
for male
convicts
under sentence
or order of
transportation
extended to
females.

the act now in recital transferred to the directors of convict prisons to be appointed thereunder, and all or any of the powers and duties of the said superintendent of convicts thereby transferred to the said directors were thereby authorised to be exercised and performed by any one of such directors: and whereas it is expedient that places of confinement should be appointed in England or Wales for female offenders under sentence or order of transportation: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. All the powers and provisions contained in section ten of the said act of the fifth year of King George the Fourth, authorising the appointment by Her Majesty from time to time of places of confinement as therein mentioned for male offenders under sentence or order of transportation, and concerning the removal to or from and confinement in such places of confinement of male offenders in the cases therein mentioned, shall extend and be applicable to and for the appointment by Her Majesty of like places of confinement for female offenders under sentence or order of transportation, and the removal to or from and confinement in such places of female offenders in the like cases; and all the provisions now in force of the acts herein recited, and of any other act, concerning or relating to the regulation and government of the places of confinement appointed under the authority contained in section ten of the said act of the fifth year of King George the Fourth, and the custody, treatment, management, and control of or otherwise in relation to the offenders confined therein, shall extend and be applicable to and in respect of the places of confinement appointed under this act, and the female offenders to be confined therein.

STATUTES AND PARTS OF STATUTES OF 1854.

STAMP DUTIES ACT.

17 & 18 VICT. CAP. 83.

An Act to amend the Laws relating to the Stamp Duties.—[9th August, 1854.]

Sect. XXVII. Every instrument liable to stamp duty shall be admitted in evidence in any criminal proceeding, although it may not have the stamp required by law impressed thereon or affixed thereto.

Instruments
admissible in
evidence,
though not
properly
stamped.

YOUTHFUL OFFENDERS ACT.

17 & 18 VICT. CAP. 86.

An Act for the better Care and Reformation of Youthful Offenders in Great Britain.—[10th August, 1854.]

WHEREAS reformatory schools for the better training of juvenile offenders have been and may be established by voluntary contributions in various parts of Great Britain, and it is expedient that more extensive use should be made of such institutions: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

I. It shall and may be lawful for Her Majesty's Secretary of State for the Home Department, upon application made to him by the directors or managers of any such institution, to direct one of Her Majesty's inspectors of prisons to examine and report to him upon its condition and regulations, and any such institution as shall appear to the satisfaction of the said Secretary of State, and shall be certified under his hand and seal, to be useful and efficient for its purpose, shall be held to be a reformatory school under the provisions of this act : provided always, that it shall be lawful for any of Her Majesty's inspectors of prisons to visit from time to time any reformatory school which shall have been so certified as aforesaid ; and if upon the report of any such inspector the said Secretary of State shall think proper to withdraw his said certificate, and shall notify

On application
from voluntary
institution to
Secretary of
State, inspector
to report.

17 & 18 Vict.
c. 86.

*Youthful
Offenders Act.*

Juvenile offend-
ers, how to be
dealt with.

Power to Treas-
ury to defray
cost of mainten-
ance at reform-
atory school.

Absconding, or
refractory con-
duct at reform-
atory school,
how to be
punished.

Cost of main-
tenance to be
partly recovered
from parents,
&c.

such withdrawal under his hand to the directors or managers of the said institution, the same shall forthwith cease to be a reformatory school within the meaning of this act.

II. Whenever after the passing of this act any person under the age of sixteen years shall be convicted of any offence punishable by law, either upon an indictment or on summary conviction before a police magistrate of the metropolis or other stipendiary magistrate, or before two or more justices of the peace, or before a sheriff or magistrate in Scotland, then and in every such case it shall be lawful for any court, judge, police magistrate of the metropolis, stipendiary magistrate, or any two or more justices of the peace, or in Scotland for any sheriff or magistrate of a burgh or police magistrate, before or by whom such offender shall be so convicted, in addition to the sentence then and there passed as a punishment for his offence, to direct such offender to be sent, at the expiration of his sentence, to some one of the aforesaid reformatory schools to be named in such direction, the directors or managers of which shall be willing to receive him, and to be there detained for a period not less than two years and not exceeding five years, and such offender shall be liable to be detained pursuant to such direction: provided always, that no offender shall be directed to be so sent and detained as aforesaid unless the sentence passed as a punishment for his offence, at the expiration of which he is directed to be so sent and detained, shall be one of imprisonment for fourteen days at the least; provided also, that the Secretary of State for the Home Department may at any time order any such offender to be discharged from any such school.

III. It shall be lawful for the Commissioners of her Majesty's Treasury, upon the representation of one of her Majesty's principal Secretaries of State, to defray, out of any funds which shall be provided by Parliament for that purpose, either the whole cost of the care and maintenance of any juvenile offender so detained in any reformatory school as aforesaid, at such rate per head as shall be determined by them, or such portion of such cost as shall not have been recovered from the parents or step-parents of such child, as hereinafter provided, or such other portion as shall be recommended by the said Secretary of State.

IV. And whereas it is expedient that some provision should be made for the punishment of any juvenile offender, so directed to be detained as aforesaid in any such reformatory school, who shall abscond therefrom, or wilfully neglect or refuse to abide by and conform to the rules thereof: be it enacted, that it shall and may be lawful to and for any justice of the peace, or in Scotland, for any sheriff or magistrate of a burgh, or police magistrate, acting in and for the county, city, borough, riding, or division wherein the said offender shall actually be at the time he shall so abscond, or neglect or refuse as aforesaid, upon the proof thereof made before him upon the oath of one credible witness, by warrant under his hand and seal, or in Scotland under his hand, to commit the party so offending for every such offence to any gaol or house of correction for the said county, city, borough, riding, or division, with or without hard labour, for any period not exceeding three calendar months.

V. The court by which any juvenile offender is ordered to be detained as aforesaid under this act shall charge the parent or step-parent of such offender, if of sufficient ability to bear the same, with a sum not exceeding five shillings per week towards the maintenance and support of such juvenile offender while remaining in such reformatory school, such payment to be in relief of the charges on her Majesty's Treasury in all

cases where the Treasury shall have defrayed or undertaken to defray the whole or any portion of the maintenance of such offender, and in all other cases such payment to be made to the directors or managers of such reformatory school.

VI. For the better compelling the parent or step-parent, as the case may be, to support and maintain wholly or partly every such juvenile offender while in such reformatory school, the provisions contained in the act passed in the forty-third year of the reign of Queen Elizabeth, intituled *An Act for the Relief of the Poor*, for compelling the parent of every poor person, being of sufficient ability, at their own charges to relieve and maintain such poor person and also the provisions in the like behalf contained in an act passed in the fifty-ninth year of the reign of King George the Third, intituled *An Act to amend the Laws for the Relief of the Poor*, and in an act passed in the fifth year of the reign of King William the Fourth, intituled *An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales*, shall be respectively held and deemed and the same respectively are hereby directed to be applicable, within England and Wales, to the compelling the parent or step-parent respectively of every such juvenile offender to maintain or support him, either wholly or partly, while remaining in such reformatory school, and for the recovery of the weekly payment so charged upon such parent or step-parent: and in Scotland such payment may be sued for and recovered at the instance of the procurator fiscal or of the treasurer of such reformatory school in the sheriffs' small debt court, and the provisions of an act passed in the eight and ninth years of Her Majesty, intituled *An Act for the Amendment and better Administration of the Laws relating to the Relief of the Poor in Scotland*, for the punishment of parents deserting their children, or refusing or neglecting to maintain them, shall be held and deemed and are hereby directed to be applicable to the case of parents or step-parents refusing or neglecting to pay the amount so charged upon such parent or step-parent as aforesaid.

VII. It shall and may be lawful for Her Majesty's Secretary of State for the Home Department, if he shall think fit to do so, to remove any such youthful offender from one reformatory school to another: provided always, that such removal shall not increase the period for which such offender was sentenced to remain in a reformatory school.

VIII. This act shall not apply to Ireland.

16 & 17 Vict.
c. 86.

*Youthful
Offenders Act.*

For compelling
parent or step-
parent to sup-
port juvenile
offenders while
remaining in
reformatory
school.

59 Geo. 3, c. 12.

4 & 5 W. 4,
c. 76.

8 & 9 Vict.
c. 83.

Juvenile offend-
ers may be
removed from
one reformatory
school to
another.

Act not to ap-
ply to Ireland.

BRIBERY ACT.

17 & 18 VICT. CAP. 102.

An Act to consolidate and amend the Laws relating to Bribery, Treating, and undue Influence at Elections of Members of Parliament.—[10th August, 1854.]

WHEREAS the laws now in force for preventing corrupt practices in the election of members to serve in Parliament have been found insufficient: and whereas it is expedient to consolidate and amend such

17 & 18 Vict. laws, and to make further provision for securing the freedom of such
c. 102. elections : be it enacted by the Queen's most excellent Majesty, by and
Bribery Act. with the advice and consent of the Lords spiritual and temporal, and
Commons, in this present Parliament assembled, and by the authority
of the same, as follows :

Repeal of acts I. The several Acts of Parliament mentioned in the schedule A. hereto
in the schedule. annexed shall be repealed to the extent specified concerning the same
acts respectively in the third column of the said schedule.

Bribery defined. II. The following persons shall be deemed guilty of bribery, and shall
be punishable accordingly :

1. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or to endeavour to procure, any money, or valuable consideration, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce any voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on account of such voter having voted or refrained from voting at any election :
2. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or to endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on account of any voter having voted or refrained from voting at any election :
3. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person to serve in Parliament, or the vote of any voter at any election :
4. Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election :
5. Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election :

And any person so offending shall be guilty of a misdemeanor, and in Scotland of an offence punishable by fine and imprisonment, and shall also be liable to forfeit the sum of one hundred pounds to any person who shall sue for the same, together with full costs of suit : provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses *bonâ fide* incurred at or concerning any election.

Bribery further defined. III. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly :

1. Every voter who shall, before or during any election, directly or indirectly, by himself, or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at any election :

17 & 18 Vict.
c. 102.

Bribery Act.

2. Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or to refrain from voting, at any election :

And any person so offending shall be guilty of a misdemeanor, and in Scotland of an offence punishable by fine and imprisonment, and shall also be liable to forfeit the sum of ten pounds to any person who shall sue for the same, together with full costs of suit. Penalty.

V. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, make use of, or threaten to make use of, any force, violence, or restraint, or inflict or threaten the infliction, by himself or by or through any other person, of any injury, damage, harm, or loss, or in any other manner practise intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who shall, by abduction, duress, or any fraudulent device or contrivance, impede, prevent, or otherwise interfere with the free exercise of the franchise of any voter, or shall thereby compel, induce, or prevail upon any voter, either to give or to refrain from giving his vote at any election, shall be deemed to have committed the offence of undue influence, and shall be guilty of a misdemeanor, and in Scotland of an offence punishable by fine or imprisonment, and shall also be liable to forfeit the sum of fifty pounds to any person who shall sue for the same, together with full costs of suit. Undue influence defined.
Penalty.

X. It shall be lawful for any criminal court, before which any prosecution shall be instituted for any offence against the provisions of this act, to order payment to the prosecutor of such costs and expenses as to the said court shall appear to have been reasonably incurred in and about the conduct of such prosecution : provided always, that no indictment for bribery or undue influence shall be triable before any court of quarter sessions. Costs and expenses of prosecutions.

XII. In case of any indictment or information by a private prosecutor for any offence against the provisions of this act, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the defendant by reason of such indictment or information, such costs to be taxed by the proper officer of the court in which such judgment shall be given. In cases of private prosecutions, if judgment be given for the defendant, he shall recover costs from the prosecutor.

XIII. It shall not be lawful for any court to order payment of the costs of a prosecution for any offence against the provisions of this act, unless the prosecutor shall, before or upon the finding of the indictment or the granting of the information, enter into a recognizance, with two sufficient sureties, in the sum of two hundred pounds (to be acknowledged in like manner as is now required in cases of writs of certiorari awarded at the instance of a defendant in an indictment), with the conditions following ; that is to say, that the prosecutor shall conduct the prosecution with effect, and shall pay to the defendant or defendants, in case he or they shall be acquitted, his or their costs. Prosecutor not to be entitled to costs unless he shall have entered into a recognizance to conduct prosecution and pay costs.

17 & 18 Vict.
c. 102.

Bribery Act.

Limitation of
actions.

In actions for
penalties,
parties, &c. to
be competent
witnesses.

Candidate
declared guilty
of bribery in-
capable of being
elected during
Parliament
then in
existence.

Short title.

Interpretation
of terms.

XIV. No person shall be liable to any penalty or forfeiture hereby enacted or imposed, unless some prosecution, action, or suit for the offence committed shall be commenced against such person within the space of one year next after such offence against this act shall be committed, and unless such person shall be summoned or otherwise served with writ or process within the same space of time, so as such summons or service of writ or process shall not be prevented by such person absconding or withdrawing out of the jurisdiction of the court out of which such writ or other process shall have issued : and in case of any such prosecution, suit, or process as aforesaid, the same shall be proceeded with and carried on without any wilful delay.

XXXV. On the trial of any action for recovery of any pecuniary penalty under this act, the parties to such action, and the husbands and wives of such parties respectively, shall be competent and compellable to give evidence in the same manner as parties, and their husbands and wives, are competent and compellable to give evidence in actions and suits under the act of the fourteenth and fifteenth Victoria, chapter ninety-nine, and *The Evidence Amendment Act, 1853*, but subject to and with the exceptions contained in such several acts : provided always, that any such evidence shall not thereafter be used in any indictment or criminal proceeding under this act against the party giving it.

XXXVI. If any candidate at an election for any county, city, or borough shall be declared by any election committee guilty, by himself or his agents, of bribery, treating, or undue influence at such election, such candidate shall be incapable of being elected or sitting in Parliament for such county, city, or borough during the Parliament then in existence.

XXXVII. In citing this act in any instrument, document, or proceeding, or for any purpose whatsoever, it shall be sufficient to use the expression, "*The Corrupt Practices Prevention Act, 1854.*"

XXXVIII. Throughout this act, in the construction thereof, except there be something in the subject or context repugnant to such construction, the word "county" shall extend to and mean any county, riding, parts, or division of a county, stewardry, or combined counties respectively returning a member or members to serve in Parliament ; and the words "city or borough" shall mean any university, city, borough, town corporate, county of a city, county of a town, cinque port, district of burghs, or other place or combination of places (not being a county as hereinbefore defined) returning a member or members to serve in Parliament ; and the word "election" shall mean the election of any member or members to serve in Parliament ; and the words "returning officer" shall apply to any person or persons to whom, by virtue of his or their office, under any law, custom, or statute, the execution of any writ or precept doth or shall belong for the election of a member or members to serve in Parliament, by whatever name or title such person or persons may be called ; and the words "revising barrister" shall extend to and include an assistant barrister and chairman presiding in any court held for the revision of the lists of voters, or his deputy in Ireland, and a sheriff or sheriff's court of appeal in Scotland, and every other person whose duty it may be to hold a court for the revision and correction of the lists or registers of voters in any part of the United Kingdom ; and the word "voter" shall mean any person who has or claims to have a right to vote in the election of a member or members to serve in Parliament ; and the words "candidate at an election" shall include all persons elected as members to serve in Parliament at such

election, and all persons nominated as candidates, or who shall have declared themselves candidates at or before such election; and the words "personal expenses," as used herein with respect to the expenditure of any candidate in relation to any election, shall include the reasonable travelling expenses of such candidate, and the reasonable expenses of his living at hotels or elsewhere for the purposes of and in relation to such election.

17 & 18 Vict.
c. 102.

Bribery Act.

XXXIX. This act shall continue in force for one year next after the passing thereof, and thenceforth to the end of the then next session of Parliament.

Duration of act.

MERCHANT SHIPPING ACT.

17 & 18 VICT. CAP. 104.

An Act to amend and consolidate the Acts relating to Merchant Shipping.—[10th August, 1854.]

Forgery.

Sect. CI. Any person who forges, assists in forging, or procures to be forged, fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any register book, certificate of surveyor, certificate of registry, declaration of ownership, bill of sale, instrument of mortgage, certificate of mortgage or sale, or any entry or indorsement required by the second part of this act to be made in or on any of the above documents, shall for every such offence be deemed to be guilty of felony.

Punishment for
forgery.

Crimes committed on the High Seas and Abroad.

CCLXVII. All offences against property or person committed in or at any place either ashore or afloat out of Her Majesty's dominions by any master, seaman, or apprentice who at the time when the offence is committed is or within three months previously has been employed in any British ship shall be deemed to be offences of the same nature respectively, and be liable to the same punishments respectively, and be inquired of, heard, tried, determined, and adjudged in the same manner and by the same courts and in the same places as if such offences had been committed within the jurisdiction of the Admiralty of England; and the costs and expenses of the prosecution of any such offence may be directed to be paid as in the case of costs and expenses of prosecutions for offences committed within the jurisdiction of the Admiralty of England.

Offences committed by
British seamen
at foreign ports
to be within Admiralty jurisdiction.

CCLXVIII. The following rules shall be observed with respect to offences committed on the high seas or abroad; (that is to say,)

(1.) Whenever any complaint is made to any British consular officer

Conveyance of
offenders and
witnesses to
United Kingdom

17 & 18 Vict.
c. 104.

*Merchant Ship-
ping Act.*

or some British
possession.

of any of the offences mentioned in the last preceding section, or of any offence on the high seas having been committed by any master, seaman, or apprentice belonging to any British ship, such consular officer may inquire into the case upon oath, and may if the case so requires take any steps in his power for the purpose of placing the offender under necessary restraint and of sending him as soon as practicable in safe custody to the United Kingdom, or to any British possession in which there is a court capable of taking cognizance of the offence, in any ship belonging to Her Majesty or to any of her subjects, to be there proceeded against according to law :

(2.) For the purpose aforesaid such consular officer may order the master of any ship belonging to any subject of Her Majesty bound to the United Kingdom or to such British possession as aforesaid to receive and afford a passage and subsistence during the voyage to any such offender as aforesaid, and to the witnesses, so that such master be not required to receive more than one offender for every one hundred tons of his ship's registered tonnage, or more than one witness for every fifty tons of such tonnage ; and such consular officer shall indorse upon the agreement of the ship such particulars with respect to any offenders or witnesses sent in her as the Board of Trade requires :

(3.) Every such master shall on his ship's arrival in the United Kingdom, or in such British possession as aforesaid, give every offender so committed to his charge into the custody of some police officer or constable, who shall take the offender before a justice of the peace or other magistrate by law empowered to deal with the matter, and such justice or magistrate shall deal with the matter as in cases of offences committed upon the high seas :

And any such master as aforesaid who, when required by any British consular officer to receive and afford a passage and subsistence to any offender or witness, does not receive him and afford such passage and subsistence to him, or who does not deliver any offender committed to his charge into the custody of some police officer or constable as herein-before directed, shall for each such offence incur a penalty not exceeding fifty pounds ; and the expense of imprisoning any such offender and of conveying him and the witnesses to the United Kingdom or to such British possession as aforesaid in any manner other than in the ship to which they respectively belong, shall be part of the costs of the prosecution, or be paid as costs incurred on account of seafaring subjects of Her Majesty left in distress in foreign parts.

Inquiry into
cause of death
on board.

CCLXIX. Whenever any case of death happens on board any foreign-going ship, the shipping master shall on the arrival of such ship at the port where the crew is discharged inquire into the cause of such death, and shall make on the list of the crew delivered to him as herein required an indorsement to the effect either that the statement of the cause of death therein contained is in his opinion true or otherwise, as the result of the inquiry requires ; and every such shipping master shall for the purpose of such inquiry have the powers hereby given to inspectors appointed by the Board of Trade under the first part of this act ; and if in the course of such inquiry it appears to him that any such death as aforesaid has been caused by violence or other improper means, he shall either report the matter to the Board of Trade, or, if the emergency of

the case so requires, shall take immediate steps for bringing the offender or offenders to justice. 17 & 18 Vict. c. 104.

CCLXX. Whenever in the course of any legal proceedings instituted in any part of Her Majesty's dominions before any judge or magistrate, or before any person authorized by law or by consent of parties to receive evidence, the testimony of any witness is required in relation to the subject matter of such proceeding, then upon due proof, if such proceeding is instituted in the United Kingdom, that such witness cannot be found in that kingdom, or if in any British possession, that he cannot be found in the same possession, any deposition that such witness may have previously made on oath in relation to the same subject matter before any justice or magistrate in Her Majesty's dominions, or any British consular officer elsewhere, shall be admissible in evidence subject to the following restrictions; (that is to say,)

Merchant Shipping Act.

Depositions to be received in evidence when witness cannot be produced.

- (1.) If such deposition was made in the United Kingdom, it shall not be admissible in any proceeding instituted in the United Kingdom :
- (2.) If such a deposition was made in any British possession, it shall not be admissible in any proceeding instituted in the same British possession :
- (3.) If the proceeding is criminal it shall not be admissible unless it was made in the presence of the person accused :

Every deposition so made as aforesaid shall be authenticated by the signature of the judge, magistrate, or consular officer, before whom the same is made ; and such judge, magistrate, or consular officer shall, when the same is taken in a criminal matter, certify, if the fact is so, and that the accused was present at the taking thereof, but it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition ; and in any criminal proceeding such certificate as aforesaid shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified ; but nothing herein contained shall affect any case in which depositions taken in any proceeding are rendered admissible in evidence by any act of Parliament, or by any act or ordinance of the Legislature of any colony, so far as regards such colony, or to interfere with the power of any colonial Legislature to make such depositions admissible in evidence, or to interfere with the practice of any court in which depositions not authenticated as hereinbefore mentioned are admissible.

Legal Procedure (General.)

DXVIII. In all places within Her Majesty's dominions, except Scotland, the offences hereinafter mentioned shall be punished and penalties recovered in manner following ; (that is to say,)

Punishment of offences, and recovery of penalties.

- (1.) Every offence by this act declared to be a misdemeanor shall be punishable by fine or imprisonment, with or without hard labour ; and the court before which such offence is tried may in England make the same allowances and order payment of the same costs and expenses as if such misdemeanor had been enumerated in the act passed in the seventh year of his late Majesty King George the Fourth, chapter sixty-four, or any other act that may be passed for the like purpose ; and may in any other part of Her Majesty's dominions make such allowances and order

7 Geo. 4, c. 64.

17 & 18 Vict.
c. 104.

*Merchant Ship-
ping Act.*

payment of such costs and expenses (if any) as are payable or allowable upon the trial of any misdemeanor under any existing act or ordinance, or as may be payable or allowable under any act or law for the time being in force therein :

- (2.) Every offence declared by this act to be a misdemeanor shall also be deemed to be an offence hereby made punishable by imprisonment for any period not exceeding six months, with or without hard labour, or by a penalty not exceeding one hundred pounds, and may be prosecuted accordingly in a summary manner instead of being prosecuted as a misdemeanor :
- (3.) Every offence hereby made punishable by imprisonment for any period not exceeding six months, with or without hard labour, or by any penalty not exceeding one hundred pounds, shall in England and Ireland be prosecuted summarily before any two or more justices, as to England in the manner directed by the act of the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, chapter forty-three, and as to Ireland in the manner directed by the act of the fourteenth and fifteenth years of the reign of Her Majesty Queen Victoria, chapter ninety-three, or in such other manner as may be directed by any act or acts that may be passed for like purposes : and all provisions contained in the said acts shall be applicable to such prosecutions in the same manner as if the offences in respect of which the same are instituted were hereby stated to be offences in respect of which two or more justices have power to convict summarily or to make a summary order :
- (4.) In all cases of summary convictions in England, where the sum adjudged to be paid exceeds five pounds, or the period of imprisonment adjudged exceeds one month, any person who thinks himself aggrieved by such conviction may appeal to the next Court of General or Quarter Sessions which is holden not less than twelve days after the day of such conviction for the county, city, borough, liberty, riding, division, or place wherein the case has been tried ; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions, or enter into a recognizance, with two sufficient sureties, before a justice of the peace, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded ; and upon such notice being given, and such recognizance being entered into, the justice before whom the same shall be entered into shall liberate such person, if in custody ; and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet ; and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as may be awarded, and shall, if necessary, issue process for enforcing such judgment :
- (5.) All offences under this act shall in any British possession be punishable in any court or by any justice of the peace or magis-

trate in which or by whom offences of a like character are ordinarily punishable, or in such other manner, or by such other courts, justices, or magistrates, as may from time to time be determined by any act or ordinance duly made in such possession in such manner as acts and ordinances in such possession are required to be made in order to have the force of law.

17 & 18 Vict.
c. 104.

Merchant Ship-
ping Act.

DXIX. Any stipendiary magistrate shall have full power to do alone whatever two justices of the peace are by this act authorised so to do.

Stipendary
magistrate to
have same
power as two
justices.

DXX. For the purpose of giving jurisdiction under this act, every offence shall be deemed to have been committed, and every cause of complaint to have arisen, either in the place in which the same actually was committed or arose, or in any place in which the offender or person complained against may be.

Offence where
deemed to have
been com-
mitted.

DXXI. In all cases where any district within which any court or justice of the peace or other magistrate has jurisdiction either under this act or under any other act or at common law, for any purpose whatever, is situate on the coast of any sea, or abutting on or projecting into any bay, channel, lake, river, or other navigable water, every such court, justice of the peace, or magistrate shall have jurisdiction over any ship or boat being on or lying or passing off such coast, or being in or near such bay, channel, lake, river, or navigable water as aforesaid, and over all persons on board such ship or boat, or for the time being belonging thereto, in the same manner as if such ship, boat, or persons were within the limits of the original jurisdiction of such court, justice, or magistrate.

Jurisdiction
over ships
lying off the
coasts.

RUSSIAN GOVERNMENT SECURITIES ACT.

17 & 18 VICT. CAP. 123.

An Act to render any dealing with Securities issued during the present War between Russia and England by the Russian Government a Misdemeanor.—[12th August, 1854.]

WHEREAS it is expedient to prevent as much as possible the Russian Government from raising funds for the purpose of prosecuting the war which it at present carries on against this country: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. If, during the continuance of hostilities between Her Majesty and the Emperor of Russia, any person within Her Majesty's dominions, or any British subject in any foreign country, shall wilfully or knowingly take, acquire, become possessed of, or interested in any stocks, funds, scrip, bonds, debentures, or securities for money which, since the twenty-ninth day of March one thousand eight hundred and fifty-four, have or

Prohibiting the
dealing in
Russian stocks,
&c.

17 & 18 Vict.
c. 123.

*Russian
Government
Securities Act.*

hath been, or which, during the continuance of hostilities as aforesaid, shall be, created, entered into, or secured by or in the name of the Government of Russia, or any persons or person on its behalf, every person so taking, acquiring, becoming possessed of, or interested in any such stocks, funds, scrip, bonds, or debentures as aforesaid shall be guilty of a misdemeanor, and in Scotland of an offence punishable with fine or imprisonment: provided always, that the provisions of this act shall not extend to or include the case of any such person or subject claiming an interest in the estate or effects of any deceased person, or the case of any such person or subject taking the estate or effects of his debtor in execution, or the case of any such person or subject claiming in any country to be interested under any bankruptcy, insolvency, sequestration, cessio bonorum, or disposition of property in trust for creditors, but that in every such case the British subject may take and receive any stocks, funds, scrip, bond, or debentures, or any share, legacy, dividend, debt, or sum of money due or belonging to him, which may arise from or be produced by the sale or proceeds of any such stocks, funds, scrip, bonds, or debentures as aforesaid; and provided also, that nothing herein contained shall be construed to include the Government notes which are used as a circulating medium in the Russian dominions.

As to trial of
offences com-
mitted beyond
the limits of
United
Kingdom.

II. All offences against this act committed beyond the limits of the United Kingdom may be inquired of, tried, determined, and dealt with as if the same had been respectively committed within the body of the county of Middlesex.

This act not
to affect the
law of
treason.

III. Nothing herein contained shall have the effect of reducing to a misdemeanor any such offence which if this act had not been passed would amount to the crime of high treason, or be deemed in any manner to alter or affect the law relating to high treason; but no person indicted for a misdemeanor under this act shall be entitled to an acquittal on the ground that the acts proved against him amount in law to the crime of high treason.

As to payment
of costs of
prosecution.

IV. On any indictment for a misdemeanor under this act the costs of the prosecution shall be allowed as directed by the several acts, seventh George the Fourth, chapter sixty-four, and fourteenth and fifteenth Victoria, chapter fifty-five; and all the provisions of the said acts empowering courts to order payment of costs and expenses, and compensation for trouble and loss of time, in the cases of the misdemeanors in the said acts mentioned, shall extend and be applicable to indictments for misdemeanor under this act.

INDEX.

ABDUCTION.

In order to constitute the offence of abduction within stat. 9 Geo. 4, c. 31, s. 20, it is not necessary that the girl should be taken by force, either actual or constructive, or be taken out of the actual possession of the parent or guardian. It is enough if she be persuaded by the prisoner to leave her home, and the control of the parent continues down to the time of the taking.

Where, therefore, the prisoner persuaded a girl under sixteen to meet him at a place two miles from her father's house, where she lived, for the purpose of going with him to America; and she did so voluntarily, leaving her home alone, then meeting the prisoner at the place appointed, and afterwards travelling with him to London:

Held, that he was guilty of abduction.
Reg. v. Manktelow, 143

ADMINISTERING.

What is an attempt to administer poison, 14

ARREST.

Unlawful, by a constable, 371

ASSAULT.

A schoolmaster who places his hands indecently on the person of a female pupil is guilty of an indecent assault, although the pupil is thirteen years of age, and does not make any actual resistance.

Letters relating to the charge, written by one of the scholars who is examined as a witness for the prosecution, may, on her denial of the handwriting, be proved and given in evidence on the part of the defendant for the purpose of affecting the witness's credit, and showing the capacity of the scholars to conspire to make a false charge against him, although the prosecutrix

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is not proved to have received the letters, or had any knowledge of their contents.

To enable the Court to order the costs of such a prosecution to be allowed, it is necessary, under the stat. 14 & 15 Vict. c. 55, s. 3, to show that the case was originally brought before the justices for summary decision.

The production of the original summons to the defendant, setting out the complaint, and requiring him to appear before the justices to "answer the same information and complaint, and to be further dealt with according to law," is sufficient evidence of the fact required, to enable the Court to order payment of the costs of the prosecution.

Reg. v. M'Gavaran, 64

A. committed an assault upon a constable, who, two hours afterwards, having obtained assistance, and when there was no danger of any renewal of the assault, attempted to apprehend him, and was wounded in the attempt:

Held, that his apprehension at that time was unlawful: and that he was improperly convicted of wounding the constable with intent to prevent his lawful apprehension.
Reg. v. Walker, 371

AUTREFOIS ACQUIT.

Plea of, in murder, 178

BAIL IN ERROR.

A defendant in misdemeanor having obtained a writ of error to the Exchequer Chamber, entered into a recognizance with two sureties approved by a judge, the condition of which was to prosecute the writ of error with effect; to surrender personally on the hearing of the writ of error; and, in case the judgment should be affirmed, to surrender himself to the Court of Exchequer Chamber to be further dealt with according to law:

2 a

Held, that this recognizance did not comply with the stat. 8 & 9 Vict. c. 68, s. 1, which requires that the recognizance shall be conditioned to prosecute the writ with effect; and in case the judgment should be affirmed, forthwith to render the defendant to prison, according to the judgment, where imprisonment has been adjudged. *Reg. v. Dugdale*, 161

BANKRUPTCY.

An indictment under the 12 & 13 Vict. c. 106, s. 254, contained the following allegation of materiality: "And that at and upon the said examination of the said J. Legge, it then and there became and was material in and to the matter of the said bankruptcy, to inquire what was the nature and extent of the said J. Legge's connection and dealings with one Mr. Marshall, and how long he had known the said Mr. Marshall, and whether the said Mr. Marshall was a relation of the said J. Legge?"

The following was the evidence given by the defendant before the Commissioners of Bankruptcy: "Mr. Marshall is not in trade; he is a speculator in anything and everything. I have known Mr. Marshall about two or three years (meaning that he the said Joseph Legge had not known the said Mr. Marshall more than two or three years.) I imagine he was always a speculator, and never in business."

The assignment of perjury was in these words: "Whereas in truth and in fact, the said person so described as Mr. Marshall aforesaid, was one and the same person as one S. Marshall Legge, and was and is the father of the said Joseph Legge; and whereas in truth and in fact, the said Joseph Legge had known the said Samuel Marshall Legge, so described as Mr. Marshall as aforesaid, for a longer period than two or three years, to wit, for twenty years and upwards."

Held, that there was no sufficient averment of materiality on the face of the indictment. *Reg. v. Legge*, 220

BIGAMY.

On an indictment for bigamy, where it is necessary to prove a Scotch marriage, some witnesses conversant with the Scotch law on the subject of marriage must be called. *Reg. v. Povey*, 83

BURGLARY.

It is not sufficient that there was an entry without a breaking of the outer door and a breaking without an entry of an inner one. *Reg. v. Davis*, 369

CERTIORARI.

The defendant, having been convicted of misdemeanor upon an indictment which he had removed into this court by *certiorari*, the judgment was respited by consent, upon an agreement by the defendant to pay the taxed costs immediately. The costs were taxed at 227*l.*; the defendant became bankrupt, and the prosecutor proved for that amount under his bankruptcy. Judgment was afterwards entered up, and the costs of the prosecution again taxed under the 5 & 6 Will. & M. c. 11, at 243*l.* Upon a rule for an attachment against the defendant for nonpayment of that sum pursuant to the Master's allocatur, and to estreat the recognizances into which the bail had entered, the court estreated the recognizances, but discharged the rule for an attachment. *Reg. v. Arthur Hills*, 174

The Lord Mayor of London having committed the defendant for trial at the Central Criminal Court upon a charge of misdemeanor, directed the city solicitor to conduct the prosecution, the expenses of which were defrayed out of the city funds. The defendant removed the indictment into this court by *certiorari*, and was convicted.

Held, that the Lord Mayor, not being personally liable for the expenses of the prosecution, was not entitled, as prosecutor, to recover the costs from the defendant under the provision of stat 5 & 6 Will. & M. c. 11, s. 3.

In order to bring the case within that statute, there must be a prosecutor personally liable for the expenses. *Reg. v. Archibald Wilson*, 176.

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CONCEALMENT OF BIRTH.

On an indictment against the mother for the murder of her illegitimate child, it appeared that the body of a child was found, a few hours after its birth, on the floor of an attic in a house where the prisoner lived as domestic servant, the head severed from the body, and both lying in sheets which had been removed from the bed-room below, which was occupied by the prisoner and her mistress, and where there was evidence to show that the birth had taken place, but it was doubtful whether the severance of the head from the body was effected there or in the attic:

Held, that there was no evidence to war-

rant the jury in finding a verdict for the statutable misdemeanor of endeavouring to conceal the birth. *Reg. v. Goode*, 318

CONFESSION.

Upon the trial of an indictment for an unnatural crime with a mare, one of the witnesses, in the presence of T. the owner of the mare, threatened to give the prisoner in charge to the police if he did not tell what business he had in T.'s stable, where the mare was. At that moment the charge had not been made known to the prisoner, but it was immediately afterwards, and then he confessed.

Held, that this confession was inadmissible in evidence, having been made under the influence of a threat held out to him in the presence of one, who being the owner of the mare, was likely to prosecute for the offence. *Reg. v. Luckhurst*, 243

A maid-servant under a charge of setting fire to a farm building belonging to her master, was given into the temporary custody of a married daughter of her master, who did not live in the house, and had no control over her as her mistress. Whilst they were alone together, the daughter said to the prisoner, "I am sorry for you, you ought to have known better; tell the truth, whether you did it or no;" and upon the prisoner replying, "I am innocent," added, "don't run your soul into more sin, but tell the truth." She then confessed.

Held that the confession was admissible, for that the words used did not amount to a threat or inducement, nor were they used by any person in authority. *Reg. v. Jane Sleeman*, 246

CONSPIRACY.

Practice where prisoners have severed in their challenges, 6.

1. An indictment alleged that the defendants I. W., C. W. and J. W., being persons in indigent circumstances, and intending to defraud tradesmen who should supply them with goods upon credit, conspired to cause J. W. to be reputed and believed to be a person of considerable property, and in opulent circumstances, for the purpose and with the intent of cheating and defrauding divers persons being tradesmen, who should bargain with them for the sale to the said I. W., of goods, &c. the property of such last-mentioned persons, of great quantities of such goods, without paying for the same, with intent to obtain to themselves money and other profits.

Held, that this indictment was not supported by proof that the defendants C. W. and J. W. being the wife and daughter of the other defendant I. W., represented that they were in independent circumstances, their income being interest of money received monthly; at another time, when engaging lodgings, that they were not in the habit of living in lodgings, and that they obtained various goods from tradesmen on credit, under circumstances that showed an intent to defraud, but no proof being adduced that those goods were obtained by reason of any of those general statements.

2. Another count alleged a similar conspiracy to represent I. W. to be a person of considerable property and fit to be trusted, and by means thereof to cheat and defraud persons who should let to the said I. W. lodgings for hire, of divers large sums of money, being the sums agreed to be paid for the hire of such lodgings.

Held, that this count was not supported by proof of the representations above mentioned, and that the defendants went to various houses taking lodgings, and quitting them without notice or payment; for, if an indictable offence at all, the object of the defendants was to obtain possession of the lodgings, and not to deprive him of the price or profits of the rooms.

3. A count charging, the defendants with conspiring, by divers subtle means and false pretences, to obtain goods and chattels from H. B., a tradesman, without paying for them, with intent to defraud him thereof, is supported by proof of overt acts, from which a conspiracy may be inferred, without proof of any such false pretence as is required in an ordinary indictment for obtaining goods by false pretences.

4. Quære, whether a count charging a conspiracy by divers subtle means and false pretences, to obtain goods and chattels from divers persons being tradesmen, without paying for them, with intent to defraud them of the same, is bad in arrest of judgment or otherwise, for not setting out the names of the parties defrauded or intended to be defrauded, or making excuse for not doing so.

Semble, that the ordinary form of indictment for false pretences, which after stating the false pretence, alleges that, by means of which false pretence, the defendants obtained the goods or money, is sufficient, and that the substitution of the words "by reason of" for "by means of" is equally unobjectionable. *Reg. v. Whitehouse*, 38
Where an indictment for conspiracy charges the offence in general terms, the defendant is

entitled to particulars of the charge, although there has been a previous committal by a magistrate.

Therefore, where an indictment contained counts charging a conspiracy to cheat tradesmen of goods, without mentioning any specific case, or name, time, or place:

Held, that the defendant was entitled to such particulars. *Reg. v. Rycroft and others*, 76

In support of an indictment charging the defendants with a conspiracy to defraud and deprive B. of certain leasehold messuages, whereof the said B. was lawfully possessed, and to cheat and defraud her of the rents and profits of the said messuages; the evidence as to B.'s title was, that F., before her death, directed S. her next-of-kin, to convey the messuages to B. on account of a supposed equitable claim of B. to money received by F. S., after the death of F., and before administration, executed an agreement to assign to B., and went with her to the houses, and pointed out the property, and said B. was landlady, and he hoped the tenants would not shuffle with her as they had with F. B. afterwards received a small sum as rent. There was no proof that F. or S. were ever in possession, and no other evidence of B.'s title.

Held, that there was some evidence of a possession by B. to support the averment in the indictment. *Reg. v. Whitehouse and another*, 129

On an indictment against A., B., C., D., E., F., G., and H., for conspiracy to cheat M. by selling a glandered horse as a sound horse, the evidence was, that A. having previously cheated M. by selling him a kicking horse, the defendants B., C., D., and E., obtained that horse from M. in exchange for a glandered horse, which he subsequently sold. A., accompanied by G., afterwards sold M. another horse, in which transaction the latter was again defrauded. Some evidence was given to show that A. was frequently in company with some of the other defendants, and that he was aware of a previous sale of the glandered horse by them, but there was no other evidence to connect him with its sale to M.

Held, that in the absence of any evidence clearly leading to the conclusion that A. was a party to that sale, there was no evidence of a conspiracy to go to the jury against him. *Reg. v. Read*, 134

An agreement with other persons by a witness who has been bound over to prosecute and give evidence on an indictable misdemeanor, not to appear on the trial, is an indictable offence, as being an agreement to obstruct

the due course of law and justice; and the indictment may allege that to have been the object of the defendants, although their immediate intention had no reference to the obstruction of justice; but was simply to extricate themselves from a scrape, and the defeat of justice was merely the effect of the conspiracy. Therefore, where H., having upon oath charged B. with fraud, and being bound over to prosecute, was subsequently induced to make an affidavit of B.'s innocence, and H. and his friends, in order to avoid the consequences of B.'s contradictory statements on oath, agreed, upon receiving a cheque from B.'s wife for a sum nearly equal to the amount of H.'s recognizances, to forfeit those recognizances by abstaining from prosecuting, and also to return the amount of the cheque if H. was not called upon his recognizances:

Held, that the facts supported an indictment charging H. and his friends with a conspiracy to obstruct and defeat the due course of law and justice; but

Held, that the facts did not support counts in the indictment, charging the conspiracy to be to obtain the money from the wife of B., and to cheat and defraud him of the same.

Notice to produce the cheque served at the office of the London agents for the country attorney of the defendants at three p.m. the day before the commencement of the trial:

Held, sufficient to let in secondary evidence of its contents:

Held, also, that such secondary evidence was admissible, although it appeared that the cheque had been seized by the sheriff under a levy upon the effects of H. for the amount of the estreated recognizance.

B., having been admitted to bail to answer the charge of H., did not surrender to take his trial, but absconded:

Held, that his wife, who was examined as a witness on the indictment against H. and others for conspiracy, might refuse to answer a question whether she had not seen her husband at a particular time or place, she having assigned as a reason for not answering it, that her husband had not appeared upon his recognizance. *Reg. v. Hamp*, 167

The offence of conspiring may be committed by conspiracy to use unlawful means for the accomplishment of a lawful object; and where A. and B., by false representations made to C., respecting a horse which the latter has sold to A., induced him to accept a smaller sum in satisfaction of the agreed price:

Held, that, although C. would not be bound by his agreement to accept the smaller

sum, A. and B. were, nevertheless, properly convicted of a conspiracy. *Reg. v. Carlisle and another*, 366

CONSTABLES.

The right of searching persons in custody must depend on the circumstances of each particular case; and the mere fact of a person being drunk and disorderly will not justify a police officer searching his person, although the officer may have received general orders to search all persons in custody; but any person, whatever may be the nature of the charge, may so conduct himself, by reason of violence of language or conduct, that it may be prudent and right to search him, as well for his own protection as for those intrusted with the duty.

The same rule applies to handcuffing persons in custody, and the right must depend on the circumstances of each particular case, as, for instance, the nature of the charge, and the conduct and temper of the person in custody. There cannot be any general rule that will justify a constable in resorting to the extreme measure of handcuffing a person in custody for a misdemeanor to a felon, and marching them through the public streets from the police station to the magistrate's office. *Leigh v. Cole*, 329

CONVICTION.

Although the entire period over which the assizes extend in one place is, by the contemplation of law, and for some purposes, one legal day, the particular day on which a prisoner's conviction took place may, when necessary, be shown; and the record does not operate as an estoppel so as to shut out evidence of the actual day on which the prisoner was convicted. *Whitaker v. Wisbey*, 109

CORONER'S INQUISITION.

Where, on a motion to quash the inquisition of a coroner's jury finding certain persons therein named guilty of wilful murder, the court has, for the purpose of hearing counsel on behalf of the next-of-kin of the deceased, granted a conditional order, the party showing cause is not entitled to begin, but the counsel for the Crown will move to make absolute the order as if moving an original motion on notice.

Though this court may quash an inquisition where a verdict has been found against a person confessedly innocent, yet it will not interfere when there has been any evidence, even though it may be insufficient to war-

rant the finding of the jury. *In the Matter of the Six-Mile-Bridge Inquisition*, 122

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EMBEZZLEMENT.

Upon an indictment for embezzlement, the evidence of dishonest dealing with the money of the prosecutor was, that the defendant, who was in his service, had received a cheque which he was to get cashed, and lay out the proceeds in the market; that he did cash it, but did not lay out the proceeds as he ought to have done, and that in the prosecutor's books he gave a wrong account of the manner in which the money had been expended. The jury found the defendant guilty of larceny, and acquitted him of the embezzlement:

Held, that the prisoner had been improperly convicted of larceny, and that a conviction for embezzlement might have been sustained. *Reg. v. Goodenough*, 206

A contract had been entered into between W. and the Great Northern Railway Company, by which W. was to provide horses and carmen (the company providing carts) for the conveyance of the company's coals to their several customers. By the contract, W. stipulated that the carman should, in all things connected with the carrying and delivery of the coals and the receipt and payment of moneys, obey the orders and commands of the company's coal manager, and should be subject to the same rules and regulations as the servants of the company; and, in case of disobedience of orders, should be immediately discharged. It was also provided that W. or the said carmen should, day by day, pay and account for, to the company's coal manager, all moneys, cheques, &c., they should receive from the customers of the company.

The defendant, being one of the carmen so engaged by W. and employed by the company, received from a customer the price of a load of coals he had delivered, and, instead of paying it over to the coal manager, he converted it to his own use.

Held, on an indictment charging him with embezzling certain moneys of W. his master, that he could not be convicted, since the money was received not for and on account of W., but for and on account of the railway company. *Reg. v. Beaumont*, 269

H. was the miller of a mill in a county gaol. It was his duty to direct any person bringing grain to be ground at the mill, to obtain at the porter's lodge a ticket specifying the quantity brought. The ticket was his order for receiving the grain, and his duty was to receive the grain with the ticket, grind it, receive the money for the grinding, and account to the governor for the money so received. It was a breach of his duty to receive or grind grain without such ticket; but he had no right to grind any grain at the mill for his private benefit.

Having misappropriated money received by him from persons who brought grain to be ground without a ticket, he was indicted for embezzlement:

Held, that a conviction could not be sustained, as the reasonable conclusion from the facts was, that he did not receive the money by virtue of his employment, but made an improper use of the mill for his private benefit.

Quære, whether he was a servant of the inhabitants of the county within the meaning of the statutes relating to embezzlement? *Reg. v. Thomas Harris*, 363.

S. & Co. were in the habit of entering in a book the names of creditors, by whom goods were supplied by them. Such names were in the first column, and in the third column was the amount of the goods so supplied. The second, or intervening one, was reserved for the signatures of the persons to whom the money was paid, and who were required to sign, at the time of payment, no other receipt or voucher being ever asked for. The prisoner being clerk to a creditor of S. & Co., called for the amount of their debt, which in due course was paid him, and he signed his name in the second column of the book before mentioned, between the entry of his employers' names and the sum due to them.

Held, on an indictment against him for embezzling that sum of money, that the entry was a receipt within the stamp laws, and, being unstamped, the whole of the entry ought not to have been read to the

jury, although it was tendered and admitted in evidence solely with the view of identifying the prisoner as the person to whom the money was paid—the payment having been proved *aliunde*.

Semble, that the signature alone might have been used, one witness proving that it was written by the person who received the money, and another proving that the handwriting was that of the prisoner. *Reg. v. Overton*, 277

A. marked money, and delivered it to a third person, that he might therewith buy goods at A.'s shop, of his shopman B. He did so, and B. having received the marked money, instead of putting it in the till, as his duty was, secreted it.

Held, that B. was properly convicted of embezzlement. *Reg. v. Samuel Gill*, 295
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EVIDENCE.

Under the stat. 11 & 12 Vict. c. 42, s. 17, which, after providing for the taking of depositions before justices, enacts that, upon proof at the trial of the death, &c., of the deponent, "it shall be lawful to read such depositions as evidence in such prosecution;"

Quære, whether the deposition of a deceased person on a charge against the prisoner of stabbing him, can be read on a trial for the murder or manslaughter of the deceased. *Reg. v. Dilmore*, 52

Before a deposition of a person who is dead, or so ill as not to be able to travel, can be read on the trial, under the stat. 11 & 12 Vict. c. 42, s. 17, it must be proved affirmatively on the part of the prosecution that the deposition was taken in the presence of the accused person, and that he or his counsel or attorney had a full opportunity of cross-examining the witness.

To give the accused a full opportunity within the meaning of the statute, the examination must be taken, question by question, in his presence, and in the presence of the magistrate, and it is not sufficient to read over the statement of the witness, previously taken and committed to writing, in the absence of the magistrate.

The accused must also be asked whether he has any question to put with reference to the statement of the individual witness.

To render the deposition of an absent person admissible, it is not necessary that he should be absolutely unable to travel; it is sufficient if his attendance would place his life in jeopardy. *Reg. v. Day*, 55
Semble, depositions taken by a consul abroad

under the 7 & 8 Vict. c. 112, ss. 58, 59, and returned to this country, and certified under the consular seal to have been duly taken, are admissible in evidence under the Mercantile Marine Act, 1850 (13 & 14 Vict. c. 93, s. 115) without further proof, although it appears from extrinsic evidence that the witnesses gave their evidence in a foreign language, which was translated into English to the prisoner, and inserted in the depositions by the counsel.

Quere, as to the effect of 8 & 9 Vict. c. 113, s. 1 (to facilitate the admission in evidence of certain official and other documents), on such a case.

Quere, whether such depositions are admissible where a consul, after the examination of such witness, asked the prisoner whether he had anything to say, and on the prisoner saying he knew nothing about the witnesses, proceeded to examine the next witness, without expressly telling the prisoner that he might put questions to the witness.

Quere, whether depositions to witnesses containing a great portion of hearsay evidence are admissible.

Quere, has the judge power to strike out the portion that consists of such hearsay evidence, and admit the residue. *Reg. v. Russell*, 60

A map or plan prepared for the purpose of a trial ought not to contain any reference to transactions and occurrences which are the subject-matter of the investigation before the court, and not existing when the survey was made; and if it does, and the objection is taken, the court will not allow the jury to look at it. *Reg. v. Mitchell*, 82.

On a trial for murder it was proved that the deceased, who lived a few hours after the wound was inflicted, made a statement, at the conclusion of which he exclaimed, "Oh, God! I am going fast; I am too far gone to say any more;" but he did not appear to have previously said anything about his condition, and there was no evidence, one way or other, to show that he was aware of it:

Held, that the statement was inadmissible as a dying declaration.

The objection to the statement having been subsequently withdrawn by the prisoner's counsel:

Held, that it might be read in evidence, although not evidence if objected to. *Reg. v. Nicolas*, 120

Upon the trial of an indictment for arson, with intent to defraud an insurance company, the policy was not produced, but parol evidence of it given, a notice to produce having been

served upon the prisoner about mid-day the day before trial:

Held, that the parol evidence was improperly received and the conviction wrong. *Reg. v. Jabez Kitson*, 159

On a trial for forgery of a bill of exchange, an expert cannot be asked whether, on comparing the signatures of the drawer, the acceptor and the indorser of the bill, he is of opinion that they are all written by the same person. *Reg. v. Coleman and others*, 163

A witness may be called to prove that, on a former trial, the prosecutrix made statements inconsistent with those made by her on the second trial of the case, and the admission of such evidence may be distinguished from allowing witnesses to be examined to disprove statements not relevant to the issue. *Reg. v. Daniel Rorke*, 196

A chaplain to a workhouse had, in his spiritual capacity, frequent conversations there with the prisoner, who was charged with the murder of her child, but who was too ill to be removed from the workhouse:

Semble, per Alderson, B., these conversations ought not to be adduced in evidence at the trial. *Reg. v. Griffin*, 219

Where a witness for a prosecution gives a different answer on examination-in-chief to that which was expected, his deposition before the coroner or justices, as the case may be, may be put in his hands for the purpose of refreshing his memory, and the question then put to him.

If the witness persists in giving the same answer after his memory has been so refreshed, the question may be repeated to him from the depositions, in a leading form. *Reg. v. Williams and others*, 343.

In order to render dying declarations admissible in evidence, the facts to show that the deceased was conscious of his state must point to the time of the statement, and therefore declarations some days prior to an expression that the deceased "had given up all in this world," were held inadmissible.

Where the deceased said he was "a murdered man, and it would have been better if they had killed him on the spot than left him to linger, and that he thought he should never get over it," but he lived several weeks afterwards:

Held, that there was a *prima facie* case for the admissibility of declarations made at the time of those statements.

But where the person to whom the declarations were made, stated that he believed the words "murdered man" were not used in their literal sense, and that the deceased did not appear to have any immediate fear of death on his mind:

Held, that the case was taken out of the principle on which such declarations are receivable in evidence. *Reg. v. Qualter*, 357

1. Statements made by a prisoner with the knowledge of a reward and pardon to any but the actual perpetrator of the offence, and under circumstances which lead to the belief that such statements were made with the hope of receiving the reward, and being allowed to give evidence as a witness on the part of the Crown are inadmissible.

2. A printed copy of a reward offered for such private information and evidence as would lead to the detection and conviction of a murderer or murderers, and a statement that the Secretary of State would recommend the grant of a pardon to any accomplice, not having been the actual perpetrator of the murder, who should give such evidence, was hung up in the magistrate's room in the county gaol. A prisoner, who could read, made a statement to the governor of the gaol in this room, and before that statement inquired whether he could give evidence, but did not say that he made the statement in that expectation, or in the hope of getting the reward, and before making the statement, he was told it would be used against him:

Held, that such statement was inadmissible.

3. But statements made, and anonymous letters written by a prisoner before his apprehension, are not inadmissible merely on the ground of the prisoner's knowledge of the offer of the reward and pardon, or by reason of his having been employed by the police authorities and paid money for his support, under the belief that he was an important witness for the Crown.

4. A statement by a prisoner that A. had proposed to him to murder B. on the following night, and that he (the prisoner) agreed to go, but did not do so, is not of itself evidence that the prisoner was accessory before the fact to the murder of B. by A. on that night.

5. A woman, having been called as a witness against A., was examined on the *voir dire*, and said she was married to A.:

Quære, whether it was competent to the counsel for the prosecution to call witnesses to show that she had, after the period of her alleged marriage, and with reference to the present charge, stated and sworn that she was not A.'s wife;

Quære, also, whether the question of coverture is one to be decided by the judge or by a jury.

6. A witness, called to prove that he had seen a prisoner at a particular spot at a

certain time, added that he had since seen a number of men in gaol, and had pointed out one:

Held, that the following was a proper form of question to put to the witness—"Who did you point him out as being?"

7. Where several prisoners are jointly indicted, the judge will not allow a separate trial on the ground that the depositions disclose statements and confessions made by one prisoner implicating another, which are calculated to prejudice the jury, and that there is no legal evidence disclosed against the other prisoner.

8. Where one of several prisoners calls witnesses on his behalf, the Crown is entitled to reply generally on the whole case.

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FALSE PRETENCES.

In an indictment for obtaining money by false pretences, the pretence alleged was, that the defendant had been to B. on behalf of the prosecutrix, and had served a certain order of affiliation on one J. B. and that he was entitled to receive for serving the said order the sum of five shillings:

Held, that this averment was not supported by proof that the defendant said that he had been with the order to B. to serve

J. B. and left it with the landlady where J. B. lodged, he being out, &c.

Held, also, that this was not an amendable variance within the meaning of the statute 14 & 15 Vict. c. 100, s. 1. *Reg. v. Bailey*, 29

Two statements made at different times, even at the interval of a month, may be so connected together as to constitute one indictable false pretence; and it is entirely a question for the jury whether they ought to be so connected.

Where, therefore, the prisoner falsely stated on one day that a certain club had 7000*l.* in the bank, in order to persuade the prosecutrix to become a member, and to hand money over to him, but she refused to do so; and a month afterwards the prisoner again recommended the club to her as "strong and respectable," and then obtained the money:

Held, that the jury were properly directed, that they might take into account what passed at the first interview as well as what passed at the time when the money was paid; but that before they could convict the defendant they must be satisfied that the representations were knowingly false and fraudulent, and that the prosecutrix was induced to part with her money by those representations. *Reg. v. Welman*, 153

The London and Brighton Railway Company were in the habit of advancing small sums of money to persons sending goods to be carried by their railway on the faith of receiving such sums from the consignee on the delivery of the goods to him. The defendant went to the principal railway station, and gave to the clerk there a card, on which was written "Case to Brighton, 11*s.* 9*d.* to pay;" at the same time requesting that the case might be sent for to a certain tavern, and forwarded to its destination. The card was, in the ordinary course of business, sent to the goods station of the company with the message left by the defendant, and the manager there directed a carman to fetch the case from the tavern and to pay the 11*s.* 9*d.* This was done. The case was sent to Brighton, but the address written upon it was found to be a fictitious one, and, on opening the case, it was found to contain nothing but brickbats and other rubbish.

Held, that these facts did not support an allegation of a false pretence that the box contained certain valuable articles. *Reg. v. Partridge*, 182

An order by the president of a burial society upon the treasurer for the payment of a sum of money to bearer on account of the society, is a valuable security within the meaning of stat. 7 & 8 Geo. 4, c. 29, ss. 5 and 53; and

a member who obtained such an order by false pretences was held properly convicted of that offence, though the rules had neither been certified or enrolled. *Reg. v. Greenhalgh and another*, 257

The defendant had obtained from a banking firm in New York, a circular letter of credit for 210*l.*, authorizing him to receive that sum, or any portion of it, from certain named correspondents in foreign countries, and then to draw for that amount upon the Union Bank in London, in favour of the persons from whom he had received it. He went to St. Petersburg, and having fraudulently altered the sum mentioned in the letter from 210*l.* to 5,210*l.*, he presented it in its altered form to W. and Co. of that city, one of the firms named in the letter, and obtained from them 1,200*l.* He drew a bill for that amount on the Union Bank in favour of W. and Co. in London, the correspondents of W. and Co. in St. Petersburg. The bill was sent by the latter firm to London, to W. and Co. there, who duly presented it at the Union Bank, but payment was refused.

On an indictment charging the defendant with an attempt to obtain the sum of 1,200*l.* from the Union Bank by false pretences, it was held, that he could not be convicted. The presentment of the bill by W. and Co. of London could not be taken to be a presentment by the defendant, with intent to obtain money, since, had the money been obtained, it would have been obtained to the use and benefit of W. and Co. and not of the defendant. *Reg. v. Sans Garrett*, 260

On an indictment for obtaining money by falsely pretending that the promissory note of a bank that has stopped payment by reason of bankruptcy, was a good and valuable security for the payment of the amount mentioned in it, and was of that value, it is not necessary to prove the proceedings in bankruptcy. It is sufficient to prove the time when the bank stopped payment, and that cash could not be obtained for the note on its being presented for payment at the place where it was made payable.

Quære, whether the fact that a banker's note was more than six years old at the time goods or money was obtained by means of it, is of itself sufficient evidence that it was worthless. *Reg. v. Smith*, 315

An indictment for false pretences will be sustained by evidence that the prisoner had sold to the prosecutor blacking which he had asserted to be "Everett's Premier," and which bore a label nearly, but not precisely, imitating Everett's labels, the said blacking not being Everett's Premier, but a spurious

manufacture of his own. *Reg. v. Dundas*, 380

FORGERY.

A. applied to B. to lend him money, and gave him the name of the defendant as a surety. B. went to the defendant, and, to satisfy himself of his respectability, asked to see his receipts for rent and taxes. The defendant placed in the hands of B., for his inspection, three documents purporting to be receipts for poor rates, with the intent to induce B. to advance money to A. One of these receipts was forged. B. inspected the documents, and then returned them to the defendant:

Held, that the defendant might be convicted within the 11 Geo. 4 & 1 Will. 4, c. 66, s. 10, of uttering a forged receipt, and that, for the purpose of rendering him liable, it was not necessary that the receipt should be used to get credit upon it by its operating as a receipt, but that it was sufficient if he used it fraudulently to obtain money by means of it:

Held, also, that it was immaterial whether the money to be obtained by means of it was for himself or for any other person. *Reg. v. Ion*, 1

On a charge for uttering an order or request for the delivery of goods, proof of the receipt of the goods by the prisoner is no evidence of the utterance.

Where, therefore, the prisoner was indicted in one count for forging, and in another count for uttering, an order for goods to be forwarded by train, and the evidence failed to show that the order was written by the prisoner, and no direct proof was offered of the utterance:

Held, that the uttering could not be inferred from proof that the prisoner attended at the station to which the goods were forwarded, and inquired for parcels addressed as mentioned in the order, and represented to the porter that they were required for a funeral, for which the goods ordered were appropriate: and, consequently, that there was no evidence to go to the jury against the prisoner. *Reg. v. Johnson*, 18

On an indictment for forging and uttering an accountable receipt for goods, the following document was held to be an accountable receipt within the statute:

"By order of R. F. Pries, we have this day transferred into the name of Messrs. Collman and Stolterfoht, 759 quarters and 4 bushels of wheat, ex August Ferdinand, Captain Richards, a Neustadt.

"Entered by R. F. Pries, and now lying

at our granaries, Bermondsey-Wall. The wheat is insured against risk of fire by us.—BROWN and YOUNG. Corn Exchange, October 23, 1852." *Reg. v. Pries*, 165

An indictment for forging an order for the payment of money, is supported by proof of a forged document, containing the words "Sirs, please to pay," &c., which, though not addressed to any one, was proved to have been presented to the bankers of the party whose signature was forged, with a representation that it was intended for them. *Reg. v. Snelling*, 280

The uttering of a forged testimonial of qualification as schoolmaster of parish school, knowing such testimonial to be forged, with intent to obtain the emoluments of the place of schoolmaster, and to deceive, is an offence at common law, although no fraud was actually perpetrated. *Reg. v. Sharman*, 312

Putting off a bill of exchange of A., an existing person, as the bill of exchange of A., a fictitious person, is a felonious uttering of the bill of a fictitious drawer.

Where N. uttered a bill of exchange purporting to be drawn by M., and at the time of the uttering represented M. to be a clerk at a railway station, and there was evidence to show that M. had authorized the use of his name as drawer of the bill, but that the prisoner knew that M. was not then, although he formerly had been, a clerk at a railway station:

Held, that there was evidence from which the jury might find that the prisoner uttered the name of M. as the name of a fictitious person, so as to support a charge of feloniously uttering the bill, knowing it to be forged:

Held, also, that statements made by the prisoner with reference to M. on a previous occasion, when he applied to get a bill discounted, were admissible in evidence. *Reg. v. Nisbett*, 320

FRAUD.

Conspiracy to defraud of houses, 129

Conspiracy to defraud by sale of unsound horses, 134, see FALSE PRETENCES

FRAUDULENT CONVEYANCE.

For any offence within 13 Eliz. c. 5, s. 3, the offender may be proceeded against by indictment.

In such an indictment it is not necessary to set out the specific facts which constitute the fraud. *Reg. v. Smith*, 31.

HIGHWAY.

Upon an indictment against a parish for the non-repair of a highway, and "Not guilty" pleaded, a former judgment upon a presentment against the inhabitants of the same parish for non-repair of the same road is conclusive evidence of the defendant's liability to repair, no fraud being imputed; and any evidence to show that the road is not situate in the parish indicted is inadmissible, even though it should be recited in a local act of Parliament as a fact that the road was in another parish, and though the presentment may, upon the face of it, show some defect, which would have been fatal on demurrer or in arrest of judgment, and the fine imposed upon the inhabitants was not proved to have been paid. *Reg. v. Inhabitants of Houghton*, 101

Where, by natural causes, as by the encroachment of the sea, a highway is wholly destroyed, the liability of the parish to repair no longer exists. *Reg. v. Inhabitants of Hornsea*, 299

INDECENCY.

An indictment for nuisance alleged an indecent exposure of the person in a public omnibus in sight of A. B. and C. D., and divers liege subjects, to the great scandal of the same.

Held, that the indictment was good; and supported by evidence of an exposure in an omnibus, made designedly in the presence of several passengers; an omnibus under such circumstances being a public place for the purposes of the indictment.

The omission to conclude *ad commune nocumentum* is cured by the stat. 14 & 15 Vict. c. 100, s. 24. *Reg. v. Holmes*, 216

INDICTMENT.

Under the stats. 7 & 8 Geo. 4, c. 28, s. 11, and 14 & 15 Vict. c. 19, s. 9, any number of previous convictions may be alleged in the indictment and proved for the purpose of aggravating the punishment. *Reg. v. Clark*, 210

An indictment for receiving, alleged by mistake that the prosecutor, instead of the prisoner, knew that the goods were stolen. The defect was not noticed till after verdict, when a motion was made in arrest of judgment; but the court below then amended the indictment:

Held, that the amendment could not be made after verdict; and that the indictment was bad, in arrest of judgment. *Reg. v. Larkin*, 377

For feloniously stealing and receiving, joinder of counts, 12

For conspiracy to defraud and false pretences, 38

Amendment of, 194

For indecent exposure, 216

For rescue, 381

For precedents of indictments, *see* APPENDIX

INSANITY.

Mode of proceeding when prisoner stands mute from, 326

JUDGMENT.

On prisoners indicted for conspiracy who have severed in their challenges, 6

JURISDICTION.

In negligence of engine driver, 247

JURY.

Upon the trial of an indictment, one of the jurors, by mistake, delivered a verdict of "not guilty," which was heard and taken down by the chairman and the clerk of the peace. The prisoner was discharged out of the dock, but other jurymen immediately called attention to the mistake, and the prisoner was brought back.

Held, that the right verdict might then be taken. *Reg. v. Vodden*, 226

LARCENY.

A mortgage deed, and title deeds accompanying it, constitute a security for money within the 7 & 8 Geo. 4, c. 29, s. 5, which makes it felony to steal "any debenture, deed, bond, bill, note, warrant, order or other security whatsoever for money or payment of money."

An indictment charging in one count the larceny of "three deeds being a security for money, to wit, for 20*l.*, of and belonging to H. W.;" and in another count the larceny of "three deeds, being a security for the payment of money, to wit, for 20*l.*, of and belonging to H. W."

Held, to be supported by proof of the larceny of deeds of lease and release from A. to B. of real estate, and of a mortgage by demise of the same property from B. to C., and held by the prosecutor as executor of C. *Reg. v. Evans Williams*, 49

If a servant removes his master's goods from one part of the premises to another, for the purpose of enabling another person to offer them to the master for sale as the goods of that third person, and if this be done in pursuance of previous concert and arrangement between them, both may be convicted of larceny. *Reg. v. Manning and Smith*, 86

A., by mistake, took B.'s lamb from a field, together with his own flock. Afterwards he discovered the mistake, but notwithstanding that discovery sold it with his own :

Held, a larceny, inasmuch as the original taking was a trespass, and the trespass continued up to the time of the fraudulent appropriation. *Reg. v. Riley*, 88

The law with regard to the finder of lost property does not apply to the case of property of a passenger accidentally left in a railway carriage, and found there by a servant of the company; and such servant is guilty of larceny if, instead of taking it to the station or superior officer, he appropriates it to his own use.

Where the evidence is consistent with the fact of an article having been abstracted from a railway carriage, either in the course of the journey through the county of A. or after its arrival at its ultimate destination in the county of B., and the prisoner is indicted in A. under the statute 7 Geo. 4, c. 64, s. 13, the case must go to the jury, who are to say whether they are satisfied that the larceny was committed in the course of the journey or afterwards. *Reg. v. Pierce*, 117.

A. having contracted with a gas company to consume gas and pay according to meter, in order to avoid paying for the full quantity of gas consumed, introduced into the entrance pipe another pipe for the purpose of conveying the gas to the exit pipe of the meter, and so to the burners for consumption without passing through the meter itself.

The entrance pipe was the property of A., but he had not by his contract any interest in the gas or right of control over it until it passed through the meter. A. having been convicted of a larceny of the gas :

Held, that the conviction was right. *Reg. v. White*, 213

A letter carrier, whose duty was ended when he had delivered the bags to the postmaster at F., stole a letter containing a shilling, after he had delivered the bags but whilst he was assisting at the postmaster's request in sorting the letters.

Held, that he was at the time of the larceny a person employed under the post-office, within the meaning of the 7 Will. 4 & 1 Vict. c. 36. *Reg. v. Reason*, 227

A servant being sent by his master to fetch coals from a wharf, where the master dealt, went with his master's sacks and cart for that purpose, and received the coals in the sacks, which, when filled, were deposited in the cart. On his way home he fraudulently abstracted from the cart some of the coals.

Held, that as soon as the coals, which were the property of the master, had been deposited in the master's cart, the exclusive possession of the servant was determined, and that a constructive possession of the master began, the servant, thenceforward, having only the mere charge or custody of the coals as a servant; consequently the servant committed a trespass in taking them from the cart, and was properly convicted of larceny. *Reg. v. Reed* 284

Upon the trial of an indictment for larceny, if the circumstantial evidence satisfies the jury of the guilt of the prisoner, he may be convicted, though the prosecutor is unable to swear that he has lost the thing charged to have been stolen. *Reg. v. Burton*, 293

A farm bailiff, who was authorized to receive money and make payments on behalf of his master, and who kept a book containing entries of such receipts and payments, which was from time to time examined by his master, made false entries in the book, giving himself credit, in several instances, for larger payments than he had in truth made, and, when the book was examined received from his master a sum of 2*l.* as the balance due to him upon that account.

Held, that he was not guilty of larceny.

Quare, whether he was not guilty of obtaining money by false pretences? *Reg. v. Green*, 296

An unstamped agreement is within the rule of the common law, which prevents choses in action from being the subject of larceny.

So held (Parke, B., *dissentiente*), where, upon an indictment for stealing a piece of paper, it appeared that the paper stolen, though unstamped, contained the terms of a subsisting written agreement. *Reg. v. Watts*, 304

On the same day on which A., a workman, left his master's service, his brother-in-law B., was found selling some of the master's property. A portion of it was usually kept in a place to which all the workmen might have access, and the rest in an inner place much less accessible; but to which A. frequently went for purposes connected with his employment. Two months before, B. had been employed as a labourer at the premises, and had had access to the outer but not to the inner place. When he sold the property he gave his name, and stated that he had

received it from A.'s wife to sell. A. and B. were jointly indicted for stealing and receiving; and upon the trial, B. in his defence, repeated his former statement.

The question being reserved whether there was any evidence to go to the jury against A. : Held, that there was not. *Reg. v. Walker and Morrod*, 310

A., having executed an assignment of all his goods and effects to trustees for the benefit of his creditors, took to pieces some machines included in the assignment, and secretly removed them from the premises, with intent to defraud the creditors. But the trustees had not at that time taken possession; and the jury found that the property was not in the care and custody of A. as agent for the trustees.

Held, that A. was not guilty of larceny.

The deed, after it had been executed once, was re-executed by A. for the purpose of having the execution attested by an attorney, and preventing the deed from operating as an immediate act of bankruptcy under sect. 68 of the Bankrupt Law Consolidation Act:

Held, that the deed was admissible in evidence, though not restamped. *Reg. v. David Pratt*, 373

Upon an indictment for larceny of money, it was proved that the prosecutor's wife delivered the money to the prisoner, with whom she eloped; and that, when he received it, the prisoner knew that she had taken it without the authority of her husband.

Held, sufficient evidence to sustain a conviction. *Reg. v. Featherstone*, 376

Joinder of counts for stealing and receiving, 12

Of title deeds, security for money, 49

Or embezzlement, 206

MALICIOUSLY DAMAGING MACHINES.

1. The silling beneath an engine employed in crushing puddled balls of iron, and rolling them into bars, is a part of a machine or engine within the stat. 7 & 8 (Geo. 4, c. 30, s. 4, which makes it felony if any person shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any threshing machine, or any machine or engine, whether fixed or movable, prepared for or employed in any manufacture.

2. A displacement of a machine is within the same statute; therefore placing a sledge-hammer within the jaws of the squeezers of

the machine, which had the effect of displacing and depressing the silling and birck-work underneath, causing a trifling injury, but not preventing the working of the machine, is a damage within the statute.

3. The intent to destroy or to render useless is a question for the jury, and may be inferred from the mere act causing the damage.

4. It is unnecessary, under this statute, to prove express malice, for everything wilfully done, if injurious, must be inferred to be done with malice. *Reg. v. Foster*, 25

MALICIOUS INJURIES.

To machinery, 198

Throwing stones on railway, 202

MALICIOUS TRESPASS.

Upon an indictment for damaging trees and shrubs in a hedge to an amount exceeding 5*l.*, a valuer proved that he estimated the injury to the trees at 1*l.*, but that it would be necessary to stub up the old hedge, and that it would cost 5*l.* 14*s.* 6*d.* to replace it:

Held, that upon this evidence the indictment could not be sustained. *Reg. v. Whiteman*, 370

MANSLAUGHTER.

See MURDER.

MURDER.

If a blow without provocation is wilfully inflicted, the law infers that it was done with malice aforethought, and if death ensues, the offender is guilty of murder, although the blow may have been given in a moment of passion.

Irritating language by the deceased forms no provocation in law, so as to reduce the crime to manslaughter.

The prisoner was indicted for the murder of his wife, and it appeared that on his return home late at night, drunk, the deceased made use of some taunting language to him, upon which he took down a sword from the shelf, and unsheathed it, and struck her with the flat part of it, and she then attempted to reach the door of the room through which her daughter, who was on the outside, endeavoured to pull her, the prisoner following her. She immediately afterwards screamed, and on being pulled out of the room by her child, a wound on the left side was observed, of which she died in a few hours. The defence

was, that the deceased in resisting the efforts of her daughter to remove her from the room, fell back on the sword, which the prisoner was too much intoxicated to know was unsheathed. Cresswell, J. directed the jury, that if the prisoner used the weapon wilfully, that was such malice aforethought as the law required, and he was guilty of murder; but if the deceased rushed on the sword accidentally, he must be acquitted altogether, and if the wound was inflicted in a struggle at the door, the prisoner having the sword in his hand, but without any intention on his part, to use it, then there was a careless use of the sword, which made him guilty of manslaughter. *Reg. v. Noon*, 137

Upon an indictment under the 7 Will. 4 & 1 Vict. c. 85, ss. 3, 5, for administering poison with intent to murder, a previous acquittal on an indictment for murder founded on the same facts cannot be pleaded in bar. *Reg. v. Connell*, 178

On a trial for murder alleged to have been committed on the 24th August, *semble*, that evidence of acts done by the prisoner on the 13th August, unaccompanied by any declaration to explain them, is not admissible. *Reg. v. Mobbs*, 223

NEGLIGENCE.

Neglect on the part of a parent to provide an infant child with necessary food and clothing is not a misdemeanor at common law, unless some actual injury is done to the child; and in an indictment for that offence, an averment that the child was actually injured is a necessary and material allegation, and must be proved.

Whether actual injury has been occasioned is a question of fact for the jury; but where, upon a case reserved, it appeared that a mother had left her children for several days without food or clothing, so that, but for the attention of a neighbour, they might probably have died; but that, in consequence of that attention, they did not suffer any serious injury, though the neighbour thought that they did suffer in some degree; and the question was put to the court whether the injury was sufficient in degree to constitute the offence:

Held, insufficient. *Reg. v. Philpott*, 140

PENALTY.

By sect. 26 of 9 Geo. 4, c. 61, it is provided, that so much of any penalty imposed under that act, as is not awarded to the prosecutor,

is to be paid to the treasurer of "the county or place" for which the justice was acting when the penalty was imposed:

Held, that the word "place" in that section means a place for which a Court of Quarter Sessions is held.

Where, therefore, a penalty was imposed by two justices of a borough, which had a commission of the peace, but no Court of Quarter Sessions, and a moiety only was awarded to the prosecutor, the treasurer of the county was held entitled to the remaining moiety. *Reg. v. Dale*, 93

PERJURY.

The defendant was indicted for perjury alleged to have been committed by him on the hearing before justices of a summons charging him with being the father of an illegitimate child:

Held, that, to support the indictment, it was necessary to give evidence of the charge made by the mother, either by production of the original order made thereon, or by giving secondary evidence of the summons after notice to the defendant to produce it; and that, in the absence of such notice, it was not sufficient to produce the minutes of the proceedings by the clerk to the justices, those minutes being of no greater authority than the notes of a short-hand writer. *Reg. v. Newall*, 21

The defendant was indicted for perjury alleged to have been committed by him on the trial of an action in the County Court, by swearing that the signature to a document was not in his handwriting. The judge of the County Court made the defendant write his name in court, and impounded the genuine, as well as the alleged forged signature.

Semble, that on the trial for perjury, the jury might look at and compare the two signatures. *Reg. v. Taylor*, 58

In an indictment for perjury, the perjury was alleged to have been committed on the trial of an indictment against B., for setting fire to a certain barn of one P. In support of the averment, a certificate of the trial and conviction of B. was produced, but the offence there mentioned was setting fire to "one stack of barley." It appearing that the offence was, in fact, the same, the barn and the stack having been destroyed by one fire:

Held, that the indictment might be amended under the 14 & 15 Vict. c. 100, s. 1.

A witness for the prosecution called to prove that B. was not at the barn at the time it was set on fire (and consequently that the evidence of the defendant who swore at the

trial that he had seen B. set it on fire, was false), admitted on cross-examination that he had given a different account on the former trial, and had on that occasion corroborated the testimony of the present defendant, but now alleged that he was persuaded by W. (who had left England) to forswear himself on the former trial:

Held, that on re-examination the witness might be asked whether he had made a statement to C. immediately after the trial respecting his evidence and respecting W., and that C. might be called to corroborate him as to the general fact, but that the particulars of the statement to C. were inadmissible, and that a person who was present at the interview between the witness and W. might be called to prove the fact of the conversation, but not the particulars. *Reg. v. Neville*, 69

The prisoner was charged with perjury, for having falsely sworn before magistrates at petty sessions, that one D. R. was the father of her illegitimate child. At the trial of the prisoner the imputed father, D. R., swore that he never had intercourse with her. In corroboration of D. R., a witness was called who swore that the prisoner had told witness, at a time when she generally denied being with child, that "D. R. had never touched her clothes."

Held that, as the negation was made by the prisoner at a time when she generally denied being with child, it was so far a part of such general denial that, although it could not be altogether withdrawn from the jury, it was not a corroboration of D. R.'s testimony, on which alone they convict her.

Another assignment of perjury was that, on the same occasion, the prisoner had falsely sworn that her master, who was uncle of D. R., promised her that he would raise her wages, and allow her to lie in at his house, if she would swear the child to a person other than his nephew, D. R.

Held, that such statement was not material to the issue so as to constitute the crime of perjury. *Reg. v. Owen*, 105

In support of an indictment for perjury, committed on the trial of a plaintiff in a County Court, it is not necessary to produce the judge's notes if proof of the perjury can be established by witnesses who were present at the trial.

Semble, that it is no objection to a witness called for that purpose, that he acted as advocate and attorney against the prisoner at the trial of the plaintiff in the County Court.

An indictment for perjury committed by a party examined at the hearing of a plaintiff in a County Court as a witness in his own

behalf, need not conclude against the form of the statute. *Reg. v. Morgan*, 107

An information on oath is not necessary to give a justice jurisdiction to convict of an offence under sect. 24 of stat. 7 & 8 Geo. 4, c. 30, the provision in sect. 30 being cumulative.

Where, therefore, upon an indictment for perjury it was proved that the defendants had sworn falsely before two justices of the peace upon the hearing of an information not upon oath, for an offence under sect. 24:

Held, that they were properly convicted. *Reg. v. Thomas Millard and Henry Millard*, 150.

A question as to the sufficiency of an indictment raised in the course of a trial may be reserved for the Court of Criminal Appeal, under 11 & 12 Vict. c. 78.

It is not necessary in an indictment for perjury, committed before an Inferior Court, to set out all the facts which show the authority of such court of limited jurisdiction, and it will be sufficient to aver that "the case came on to be tried, in due form of law," before the judge of the Inferior Court, "he having then and there sufficient and competent authority to administer the said oath to the said E. L." (the prisoner). *Lavey v. The Queen* (5 Cox Crim. Cas. 529), approved of and acted on.

"Jurisdiction" in 31 Geo. 3, c. 18, s. 111, means local jurisdiction, and, accordingly, under that act, Courts of Quarter Session have jurisdiction to try cases of perjury by statute as well as at common law. *Reg. v. Lavelor*, 187

A Master Extraordinary of the Court of Chancery has no authority to administer an oath and take an affidavit to be used in a suit in the Admiralty Court, although the practice of that court is to receive affidavits so sworn; and the offence of perjury cannot be committed in an affidavit so taken, but to make such an affidavit falsely with a view to its being used in the Admiralty Court, would be a misdemeanor at common law. *Reg. v. Stone*, 235

Where perjury is assigned upon evidence given before an arbitrator, upon a reference at *Nisi Prius*, of a cause and all matters in difference between the parties, it must be distinctly shown whether the evidence was material in respect of the matters in issue in the cause, or of the other matters in difference between the parties.

Quære, whether the production of the order of reference is sufficient evidence of the authority of the arbitrator, without producing the *Nisi Prius* record? *Reg. v. Ball*, 360

POISONING.

Putting poison in a place where it is likely to be found and taken, if done with intent to murder, is an attempt to administer poison within the stat. 7 Will. 4 & Vict. c. 85, s. 3.

Therefore, when the prisoner purchased some "salts of sorrel," and put it in the prosecutor's sugar basin, mixing it with the sugar, and the prosecutor subsequently put some of the mixture into his tea, but on tasting it discovered that there was something wrong, and on investigation the poison was discovered :

Held, that this constituted an attempt to administer poison, and the only question for the jury, if the act was proved, was, whether it was done with intent to commit murder. *Reg. v. Dale*, 14

POSSESSION OF IMPLEMENTS OF HOUSEBREAKING.

By stat. 14 & 15 Vict. c. 19, s. 1, it is made a misdemeanor if any person shall be found by night having in his possession, without lawful excuse (the proof of which shall lie on such person), any pick-lock, key, crow, jack, bit, or other implement of house-breaking.

Held, that in order to constitute the offence, the possession need not be with intent to commit a felony. *Reg. v. Bailey*, 241

POST OFFICE.

Larceny from, 28

PRACTICE.

On an indictment for felony, after the jury had delivered a verdict of guilty, it was discovered that one of the witnesses for the prosecution had given his evidence without having been previously sworn.

Held, that the proper course to pursue was, to direct the jury to reconsider the case, dismissing from their minds the evidence of that particular witness. *Reg. v. James*, 5

One of several prisoners indicted for a conspiracy may be tried separately, and, upon conviction, judgment may be passed on him, although the others, who have appeared and pleaded, have not been tried. *Rex v. Cook and Others* approved of, and the principle of that case applied to the present case.

Where three prisoners have been jointly indicted for a conspiracy to murder, and

severally pleaded not guilty, but have severed in their challenges, and the Crown has, consequently, proceeded to try one of such prisoners :

Held, that, upon conviction of such prisoner, judgment must follow, although the others have not been tried, and that the possibility of the other prisoners being found not guilty (although such a verdict would be a ground for reversing the judgment), is not a sufficient reason for holding such judgment, and all the legal consequences of such conviction of such prisoner, irregular. *Reg. v. Ahearn*, 6

Where a traverser seeks to have a postponement of his trial, on the ground that statements and abusive articles have been inserted in the public papers, reflecting on his character and calculated to damage his case and prejudice the mind of the public against him, and that consequently he cannot have an impartial trial, it is not sufficient to set forth extracts from those articles and the substance of the statements ; but the traverser should pledge his oath that he believes he cannot have a fair trial, from the prejudices created by such statements :

Semble, if a postponement be asked for the traverser on the ground of the difficulty of obtaining material witnesses, the affidavit should set forth the names and descriptions of such witnesses and state such special circumstances as render the attendance of such witnesses difficult, if not impossible.

Semble, that the recent indisposition of the traverser, rendering him incapable of conducting his defence in person, is not sufficient to induce the court to postpone the trial, unless, perhaps, under very special circumstances, as no man is bound to defend himself in person. *Reg. v. Birch*, 10

Where a prisoner has been committed for trial at the Assizes, and parties bound over by the magistrate to prosecute and give evidence, the judge will not discharge the recognizances on an intimation that the Attorney-General does not think it a proper case for prosecution.

Semble, the proper course is for the Attorney-General to enter a *nolle prosequi*. *Reg. v. Freakley*, 75

A judge has no power to order payment of the expenses incurred in the apprehension of a prisoner who had left England, nor has the committing magistrate power, under the stat. 7 Geo. 4, c. 64, to certify for such expenses

Semble, the proper course under such circumstances is to memorialize the Secretary of State, who will refer to the judge for his opinion as to whether it is a proper case for

the allowance of the costs of apprehension. *Reg. v. Barrett*, 75

Semble, where a prisoner is defended by counsel, and the facts of the crime imputed to him are few and simple, although the practice in some such cases has been for counsel to enter at once on the examination of witnesses, without previously stating the case to the jury, an opening address is, generally speaking, advantageous, and should therefore be made. *Re Morgan*, 116

The judge will not grant an order for the delivery to a prisoner of money found on his person: for

Semble, neither a judge or justice of the peace has power to make such an order. *Reg. v. Pierce*, 117

Where stolen property has been laid in a wrong person, the indictment may be amended, even after the counsel for the prisoner has addressed the jury and closed. *Reg. v. Rymes* (3 Car. & Kir. 326) overruled. *Reg. v. Fullarton*, 194

Two prisoners were indicted for manslaughter, the counsel for one of them having addressed the jury on his behalf, the counsel for the second prisoner did the same, and called witnesses, whose evidence tended to show negligence on the part of the first.

Held, that the counsel for the first prisoner had a right to cross-examine the witnesses for the second, and then to address the jury again, confining himself to comments on the testimony the second prisoner had adduced. *Reg. v. Woods*, 224

Where a prisoner, on being called upon to plead, stands mute, and exhibits symptoms of insanity, but which the counsel for the prosecution is instructed are feigned, and a jury is empanelled under the provisions of the stat. 39 & 40 Geo. 3, c. 94, s. 2, to try his sanity, it is the duty of the prosecution to lay evidence before the jury from which the court may collect the truth of the matter, and then the counsel for the prisoner may call witnesses to rebut any inference of art and design.

If the prosecution does not adduce such evidence, the judge will endeavour to ascertain the truth by examining the officers of the prison, or will postpone the trial, independently of the statute, until the next assizes.

Where, in a case of a father and son jointly indicted for murder, the father appeared to be insane, but there was a doubt expressed by the prosecution as to its reality, the judge examined the gaoler and the medical attendants in his private room, and the evidence being conflicting, a jury was impanelled to try the prisoner's sanity, and

the prosecution adduced conflicting evidence, upon which the prisoner's counsel addressed the jury, who found that the prisoner was then insane, and thereupon he was ordered to be detained in custody during Her Majesty's pleasure, and the youngest prisoner was liberated upon bail. *Reg. v. Davies*, 326

The practice, in Ireland, as to issuing the writ of certiorari to remove indictments not prosecuted by the Attorney-General, is similar to that provided by the 5 & 6 Will. 4, c. 33 (English), viz., that a private prosecutor, in order to obtain the writ, must apply to the court in term time, and to a judge thereof in vacation for his fiat.

Such a rule in Ireland, and *semble*, the English act, implies a discretion in the judge to whom the application is made to grant or refuse his fiat, and does not require such judge to make the order as of course.

The court or a judge in vacation, even if a case be made by prosecutor for granting the order, will refuse a fiat if such case be displaced, or it is shown that the rule would be productive of hardship and injustice to the traverser. *Reg. v. Cantwell*, 345

When upon a summons before a magistrate, the sole complainant dies, after obtaining a conditional order that the magistrate should proceed on the summons and take the informations, the court will not make such order absolute, although the husband of the prosecutrix offers to go on with the case and make himself liable for the consequences if the prosecution should appear to be malicious.

A., a married woman, issued a summons for an illegal conspiracy to defeat justice by destroying papers in issue in a will case. The magistrate, after hearing the evidence, refused to proceed in the matter, or to take the informations. A conditional order was obtained to compel him to do so, and between the obtaining of the conditional order and the showing cause, A. died. B., her husband, came in to make absolute the conditional order, and offered to go on with the summons and make himself liable as the prosecutor:

Held, that the cause shown should be allowed, and the order discharged, but without costs, as there had been a fatality. *Reg. v. Sarah Kelly, C. W. Campton, and J. R. Malone*, 350

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PRISON.

An application on behalf of a prisoner for a relaxation in his favour of the rules of the prison where he is confined, should be brought forward by way of petition, and not as a motion, and will not be heard unless a copy of the rules, properly verified, is before the court.

Semble, such application should not be entertained at all. *Per Crampton, J. Reg. v. Wallace*, 193

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RAILWAY.

To constitute a felony under the statute 14 & 15 Vict. c. 19, s. 7, which enacts that "if any person shall wilfully and maliciously cast, throw, or cause to fall or strike against, into or upon any engine, tender, carriage, or truck used upon any railway, any wood, stone, or other matter or thing, with intent to endanger the safety of any person being in or upon such engine, tender, carriage, or truck, every such offender shall be guilty of felony," it is necessary that the stone or other thing used should be thrown against and strike an engine, tender, carriage, or truck, having a person or persons in or upon it; and, therefore, although a stone may be thrown at a train with intent to injure persons being therein, yet, if it strikes a carriage or tender not having any person in or upon it at the time, the felony is not proved. *Reg. v. Court*, 202

An offence alleged to be committed under the 13th section of 3 & 4 Vict. c. 97, can only be tried at Quarter Sessions, and is not within the jurisdiction of the Central Criminal Court.

The neglect of the driver and stoker of a railway engine to keep a good look-out for signals, according to the rules and regulations of the railway company, the consequence of which neglect is, that a collision occurs, and the safety of passengers is endangered, is not an offence within the 15th section of the above act. *Reg. v. Pardonon and Wood*, 247

RAPE.

Admissibility of evidence to prove statement of the prosecutrix denied by her, with reference to a former transaction affecting her chastity.

The prosecutrix, on a charge of rape, having, on cross-examination, said that she had herself been charged with stealing money, and on that occasion had accounted to a police constable for the possession of the money, by stating that it was given her for not complaining of a person who had insulted her by solicitations against her chastity, but denied that she had said the money was given her for having connexion with him:

Held, that the prisoner could not call the constable as a witness, to contradict the prosecutrix, by proving that she had said that the money was given her for that purpose. *Reg. v. Dean*, 23

RECEIVING.

Where, under the 11 & 12 Vict. c. 46, s. 3, a count for feloniously receiving property, knowing it to be stolen, is joined with a count for feloniously stealing, it must appear with sufficient certainty that the property is the same in each count:

The prisoners were indicted for feloniously stealing 100*l.* in money, one purse, &c. the property of R. G. There was a second count for receiving 35*l.* in money, one purse, &c. the property of R. G. aforesaid, then lately before feloniously stolen.

Held, that it did not sufficiently appear that the last-mentioned property was part of, or the same as, that contained in the first count, and that consequently the prisoners were not bound to plead to both counts, and that the Crown should elect as to which count they would try the prisoners upon. *Reg. v. Sarsfield*, 12

A wife received from her husband goods which he had stolen, she knowing at the time that they were stolen; and she endeavoured afterwards to prevent their discovery.

The judge told the jury that as her husband had delivered the stolen articles to the prisoner, the law presumed that she acted under his control in receiving them, but that this presumption might be rebutted. If, therefore, in considering the evidence they were perfectly satisfied that at the time when she received any of the articles she knew that they were stolen, and in receiving them acted not by reason of any control or coercion of her husband, but voluntarily, and with a dishonest and fraudulent intention, she might be found guilty. The jury having found a verdict of guilty:

Held, that the conviction could not be supported. *Reg. v. Brooks*, 148

It is not necessary, to constitute a receiving of stolen goods, that the person indicted should have had manual possession of the goods; but directing a servant to dispose of them, as by pawning or otherwise, will be sufficient to support the charge.

Stolen property is brought by the thief into A.'s shop; A. with guilty knowledge, calls her servant and directs her to take the stolen goods to the pawn office and "pawn them for the girl" (the thief.) A.'s servant does so accordingly, and brings back the money, which she hands to the thief in her mistress's presence. A. never had manual possession of either the goods or the money.

Held, that this amounted to a receiving by A. of the stolen property, and that the conviction of A. for receiving should be affirmed. *Reg. v. Miller and Connors*, 353

RESCUE.

The proper mode of stating a case for the opinion of the court, is to submit some point or points of law for its consideration, and not to seek the decision of the court on the evidence generally, as to its sufficiency to support a conviction.

In an indictment for a rescue of property distrained by a poor rate collector, it is not necessary to prove the making of the rate, or that there is any sum due at the time of the distress, but the warrant to collect, if in the form and with the requisites required by the Poor Law Act, will be sufficient *prima facie* evidence of the authority of the collector.

The section which requires the sum to be collected to be specified in the warrant, is satisfied by a reference in the warrant to the collector's book delivered at the time to the collector, and by such reference the book becomes incorporated with the warrant. *Reg. v. Brenan*, 381

RETURNING FROM TRANSPORTATION.

A certificate of previous conviction for felony, prepared under the 7 & 8 Geo. 4, c. 28, s. 11, which makes "a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony," evidence, and which certificate states that the prisoner "was thereupon ordered to be transported beyond the seas for the term of his natural life," is good evidence of his conviction and sentence, on an indictment for returning from transportation before the expiration of a sentence under the 5 Geo. 4, c. 84, which makes "a certificate in writing the effect and substance only (omitting the formal part) of every indictment and conviction of such offender, AND OF THE SENTENCE OR ORDER FOR HIS OR HER TRANSPORTATION OR BANISHMENT," evidence of the conviction, &c.

The judge, on the trial, has power to make an order on the treasurer of the county for the reward of 20*l.* given by the 5 Geo. 4, c. 84, s. 22, to whoever shall discover and prosecute to conviction, any offender for being at large before the expiration of the sentence of transportation; confirming *Reg. v. Emmons*, 2 M. & R. 280. *Reg. v. Ambury*, 79

SHOOTING.

Upon the trial of an indictment for shooting, with intent to murder a person unknown, it must be proved that there was an intent on the part of the prisoner to murder some particular person.

The court will not amend an indictment after plea, where, in its amended form, it might be demurrable for generality. *Reg. v. Lalletment*, 204

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 14 & 15 Vict. c. 55, s. 3 (Costs of Prosecution), 64
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STEALING IN A DWELLING-HOUSE.

In order to constitute the offence under the stat. 7 Will. 4 & 1 Vict. c. 86, of stealing in a dwelling-house, and by menaces and threats putting persons being therein in bodily fear, it is not necessary that all the persons engaged in the crime should be actually in the house; and if one remains outside, he may be equally guilty of using menaces and threats, if there was a common purpose to inspire terror. A threat to a person outside the house is not within the words of the statute, but it is a circumstance from which the jury may infer the line of conduct inside the house.

The act of placing persons with their faces against a wall, and desiring them not to look round, without the use of any actual violence, is evidence of an intention to obtain money by threats, and the bodily fear may be inferred, although the persons so treated may deny that such acts caused alarm or fear. *Reg. v. Murphy*, 340

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UTTERING.

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WEAVING.

The cords employed to raise the "harness" or working tools of a loom, in order to move the shuttle to and fro, constitute "tackle" employed in weaving, and, therefore, cutting them is an offence within the 7 & 8 Geo. 4, c. 30, s. 3, which makes it felony to maliciously cut, break, or destroy, or damage with intent to destroy or to render useless (*inter alia*), any "tackle" or implement, whether fixed or moveable, prepared for or employed in carding, spinning, throwing, "weaving," &c.

Under this statute, the maliciously cutting such tackle is a complete offence, and it is unnecessary to aver or prove an intent to destroy or render it useless.

Quere, whether cutting the "thrum," i. e., the ends of the woollen threads generally left in the machine when a piece of cloth is finished, for the purpose of more readily adjusting the succeeding work, is an offence within the statute? At all events, it does not support a count for maliciously cutting woollen warp; but the fact of cutting the "thrum" may be given in evidence in support of a count for cutting "tackle," in order to show the animus of the latter act, and that it was done maliciously. *Reg. v. Smith*, 198

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Forms of Indictments for Offences Triable at the Assizes only, adapted to the Provisions of the Criminal Law Amendment Act, 14 & 15 Vict. cap. 100, and alphabetically arranged. By HENRY T. J. MACNAMARA, Esq., of Lincoln's Inn, Barrister-at-Law.

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removing, concealing and embezzling his property, with intent to defraud his creditors, cxxxiii.
113. Indictment for dog stealing under 8 & 9 Vict. c. 47, s. 2, cxxxvii.
114. Indictment for stealing a quantity of base coin, cxxxvii.
115. Indictment against a defendant for obtaining money by falsely pretending that he had authority from a creditor to receive a sum of money from a debtor—with counts for soliciting the debtor to conspire with him falsely to pretend to the creditor that the debt had been discharged, cxxxviii.
116. Indictment for perjury, committed before a judge of a provincial County Court, on an application by the defendant to be discharged from a certain prison, where he was in custody under an order of the High Court of Chancery, for a contempt of that court, cxli.
117. Indictment against two defendants for obtaining goods by falsely pretending that one of them was of a certain trade, and a respectable and responsible person; with counts for conspiracy, clvii.</p> |
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NEW STATUTES.

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- 16 Vict. c. 2. An Act to amend an Act of the First Year of King George the Fourth, for the further prevention of forging and counterfeiting Bank Notes, clxi.
- 16 Vict. c. 30. An Act for the better Prevention and Punishment of aggravated Assaults upon Women and Children, and for preventing Delay and Expense in the Administration of certain parts of the Criminal Law, cxlii.
- 16 & 17 Vict. c. 43. An Act for enabling the Justices of Counties to contract in certain Cases for the Maintenance and Confinement of convicted Prisoners in the Gaols of adjoining Counties, clxv.
- 16 & 17 Vict. c. 99. An Act to substitute, in certain cases, other Punishment in lieu of Transportation, clxvi.
- 16 & 17 Vict. c. 102. An Act to prevent the defacing of the current Coin of the Realm, clxix.
- 16 & 17 Vict. c. 118. An Act to amend an Act of the seventh year of Her Majesty for the better Apprehension of certain Offenders clxx.
- 16 & 17 Vict. c. 121. An Act for providing Places of Confinement in England or Wales for Female Offenders under Sentence or Order of Transportation, clxxi.
- 17 & 18 Vict. c. 83. An Act to amend the Laws relating to the Stamp Duties, clxxiii.
- 17 & 18 Vict. c. 86. An Act for the better Care and Reformation of Youthful Offenders in Great Britain, clxxiii.
- 17 & 18 Vict. c. 102. An Act to consolidate and amend the Laws relating to Bribery, Treating, and undue Influence at Elections of Members of Parliament, clxxv.
- 17 & 18 Vict. c. 104. An Act to amend and consolidate the Acts relating to Merchant Shipping, clxxix.
- 17 & 18 Vict. c. 123. An Act to render any dealing with Securities issued during the present War between Russia and England by the Russian Government a Misdemeanor, clxxxiii.



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